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Briefing on How To Use the Federal Register
For information on a briefing in Chicago, IL, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Presidential Documents

Title 3—

The President

Memorandum of February 10, 1992

Delegation of Authority To Report to the Congress and To Publish in the Federal Register Proposed Changes in the Social Security Number Card

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the "Act") (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act, I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the **Federal Register** the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, February 10, 1992.

[FR Doc. 92-13644
Filed 6-5-92; 1:14 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12810 of June 5, 1992

Blocking Property of and Prohibiting Transactions With the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), the National Emergencies Act (50 U.S.C. 1601, *et seq.*), section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1514), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolution No. 757 of May 30, 1992, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, all property and interests in property of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and property and interests in property held in the name of the Government of the Federal Republic of Yugoslavia or of the former Government of the Socialist Federal Republic of Yugoslavia, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) The importation into the United States of any goods originating in, or services performed in, the Federal Republic of Yugoslavia (Serbia and Montenegro), exported from the Federal Republic of Yugoslavia (Serbia and Montenegro) after May 30, 1992, or any activity that promotes or is intended to promote such importation;

(b) The exportation to the Federal Republic of Yugoslavia (Serbia and Montenegro), or to any entity operated from the Federal Republic of Yugoslavia (Serbia and Montenegro), or owned or controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), directly or indirectly, of any goods, technology (including technical data or other information controlled for export pursuant to the Export Administration Regulations, 15 C.F.R. Parts 768, *et seq.*), or services, either (i) from the United States, (ii) requiring the issuance of a license by a Federal agency, or (iii) involving the use of U.S.-registered vessels or aircraft, or any activity that promotes or is intended to promote such exportation;

(c) Any dealing by a United States person related to property originating in the Federal Republic of Yugoslavia (Serbia and Montenegro) exported from the Federal Republic of Yugoslavia (Serbia and Montenegro) after May 30, 1992, or property intended for exportation from the Federal Republic of

Yugoslavia (Serbia and Montenegro) to any country, or exportation to the Federal Republic of Yugoslavia (Serbia and Montenegro) from any country, or any activity of any kind that promotes or is intended to promote such dealing;

(d) Any transaction by a United States person, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the Federal Republic of Yugoslavia (Serbia and Montenegro), the provision of transportation to or from the United States by any person in the Federal Republic of Yugoslavia (Serbia and Montenegro) or any vessel or aircraft registered in the Federal Republic of Yugoslavia (Serbia and Montenegro), or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), of any transportation by air that includes any stop in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(e) The granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro);

(f) The performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(g) Any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any United States person to or for the benefit of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) or any other person in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(h) Any transaction in the United States or by a United States person related to participation in sporting events in the United States by persons or groups representing the Federal Republic of Yugoslavia (Serbia and Montenegro);

(i) Any transaction in the United States or by a United States person related to scientific and technical cooperation and cultural exchanges involving persons or groups officially sponsored by or representing the Federal Republic of Yugoslavia (Serbia and Montenegro), or related to visits to the United States by such persons or groups other than as authorized for the purpose of participation at the United Nations.

Sec. 3. Nothing in this order shall apply to (i) the transshipment through the Federal Republic of Yugoslavia (Serbia and Montenegro) of commodities and products originating outside the Federal Republic of Yugoslavia (Serbia and Montenegro) and temporarily present in the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) only for the purpose of such transshipment, and (ii) activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Monitor Mission.

Sec. 4. Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited.

Sec. 5. For the purposes of this order:

(a) The term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels and aircraft of U.S. registration;

(b) The term "the Federal Republic of Yugoslavia (Serbia and Montenegro)" means the territory of Serbia and Montenegro;

(c) The term "the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)" includes the government of the newly constituted Federal Republic of Yugoslavia, the Government of Serbia, and the Government of

Montenegro, including any subdivisions thereof or local governments therein, their respective agencies, instrumentalities and controlled entities, and any persons acting or purporting to act for or on behalf of any of the foregoing, including the National Bank of Yugoslavia, the Yugoslav National Army, and the Yugoslav Chamber of Economy, the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenegro, and the Montenegrin Chamber of Economy.

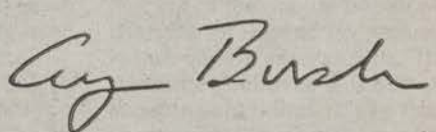
Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property, or any transactions involving the transfer of anything of economic value, by the any United States person to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), any person in the Federal Republic of Yugoslavia (Serbia and Montenegro), or any person or entity acting for or on behalf of, or owned or controlled, directly or indirectly, by any of the foregoing. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 7. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order No. 12808 and not revoked administratively shall remain in full force and effect under this order until amended, modified, or terminated by proper authority.

Sec. 8. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 9. (a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
June 5, 1992.

[FR Doc. 92-13715
Filed 6-5-92; 4:39 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to the Speaker of the House and the President of the Senate, Executive Order 12808, and a message to Congress regarding the national emergency with respect to Yugoslavia, see issue 23 of the *Weekly Compliation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV-91-456]

Table Grapes Grown in Southeastern California; Final Rule Establishing Interest and Late Payment Charges on Late Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes interest and late payment charges on late assessments owed handlers regulated under the marketing order. This action will contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 690-3670.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 925 [7 CFR part 925], regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, grapes are subject to assessments. An assessment rate established under the marketing order is intended to be applicable to all assessable grapes handled during a fiscal year. This action establishes interest and late payment charges on late assessments. As provided in this rule, these charges will not be imposed until 45 days after the initial billing date. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California desert grapes subject to regulation under the marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the grape handlers and producers may be classified as small entities.

The California Desert Grape Administrative Committee (committee), the agency responsible for local administration of the order, met on October 31, 1991, and unanimously recommended establishing interest and late payment charges on handler assessments payable to the committee.

Under the terms of the marketing order, each regulated table grape handler is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. It is important for handlers to pay their assessments promptly so that the committee has sufficient funds to cover its expenses. The order also authorizes the committee, with the Secretary's approval, to establish interest and late payment charges on delinquent assessments.

The committee recommended imposing a late payment charge of 5 percent of the unpaid balance and charging interest of 1½ percent per month on late assessments. The committee believes that this action will encourage handlers to pay their assessments in a timely manner. The interest and late payment charges will not be imposed until 45 days after the initial billing date, so that handlers will have ample time to pay their assessments and avoid incurring the additional charges.

A proposed rule was published in the January 23, 1992, **Federal Register** [57 FR 2690] and interested persons had until February 24, 1992, to submit written comments. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is hereby found that

this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register [5 U.S.C. 553] because the shipping season starts in mid-April and this rule should be implemented as soon as possible. Further, handlers are aware of this rule, which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 925

Grapes, marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended to read as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Part 925 is amended by adding a new section 925.141 to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 925.141 Late payments.

(a) The committee shall impose a late payment charge of 5 percent on the unpaid balance on any handler whose assessment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date shown on the handler's assessment statement.

(b) In addition to that specified in paragraph (a) of this section, the committee shall impose an interest charge on any handler whose assessment payment has not been received in the committee's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 45 days of the invoice date. The rate of 1½ percent per month shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 45 day period.

(c) The committee, upon receipt of a late payment, shall promptly notify the handler [by registered mail] of any late payment charge and/or interest charge due as provided in paragraphs (a) and (b) of this section. If such charges are not paid, or the envelope containing payment is not legibly postmarked by the U.S. Postal Service, within 45 days of the date of such notification, late payment and interest charges as provided in paragraphs (a) and (b) of this section will accrue on the unpaid amount.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13416 Filed 6–8–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 925

[Docket No. FV–91–451 FR]

California Desert Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 925 for the 1992 fiscal period. Authorization of this budget will permit the California Desert Grape Administrative Committee [committee] to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: January 1, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–3923.

SUPPLEMENTARY INFORMATION: This final rule is effective under Marketing Agreement and Order No. 925, regulating the handling of grapes grown in a designated area of southeastern California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, grapes are subject to assessments. It is intended that the assessment rate will be applicable to all assessable grapes handled during the 1992 fiscal year, beginning January 1, 1992 through December 31, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California Desert grapes under this marketing order, and approximately 90 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of grape producers and handlers may be classified as small entities.

The budget of expenses for the 1992 fiscal period was prepared by the California Desert Grape Administrative Committee [committee], the agency responsible for local administration of the marketing order, and submitted to

the Department of Agriculture for approval. The members of the committee are handlers and producers of California Desert grapes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of California desert grapes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on November 21, 1991, and unanimously recommended a 1992 budget of $55,100. Major increases in this year's budget are in the telephone and communications, office equipment and repairs, rent, vehicle—field supervisor, and insurance—workman's compensation categories.

The committee also unanimously recommended an assessment rate of $0.0025 per lug, the same as last season. This rate, when applied to anticipated shipments of 8,000,000 lugs, would yield $20,000 in assessment income. This, along with $1,100 in interest income and $34,000 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992 fiscal period, estimated at $16,360, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on January 3, 1992 [57 FR 219]. That document contained a proposal to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through January 16, 1992. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of the section until 30 days after publication in the Federal Register [5 U.S.C. 553] because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal period for the program began on January 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 925.211 is added to read as follows:

Note: This section will not appear in the *Code of Federal Regulations.*

§ 925.211 Expenses and assessment rate.

Expenses of $55,100 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.0025 per lug of grapes is established for the fiscal period ending December 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13419 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 932

[Docket No. FV–91–458]

Expenses and Assessment Rate for Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 932 for the 1992 fiscal year (January through December) established for that order. The rule is needed for the California Olive Committee (committee) to incur operating expenses during the 1992 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 932 (7 CFR part 932) regulating the handling of olives grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives are subject to assessments. It is intended that the assessment rate will be applicable to all assessable olives handled during the 1992 fiscal year, beginning January 1, 1992 through December 31, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or

has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6 handlers of California olives regulated under this marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most, but not all, of the olive producers and none of the olive handlers may be classified as small entities.

The California olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable olives received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are olive producers and handlers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected olive receipts (in tons). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on December 2, 1991, and unanimously recommended 1992 fiscal year expenditures of $1,832,230 and an assessment rate of $20.68 per ton of assessable olives received by handlers under M.O. 932. In comparison, 1991 fiscal year budgeted expenditures were $2,115,975 and the assessment rate was $20.23 per ton.

Major expenditure items budgeted for the 1992 fiscal year compared with those budgeted in 1991 (in parentheses) are $348,230 ($354,975) for program administration, $65,500 ($126,000) for production research, $786,000 ($830,000) for consumer advertising, $516,000 ($632,000) for food service advertising, and $117,000 ($173,000) for public relations. The $283,745 decrease in budgeted expenditures from 1991 is attributed to decreases in production research, consumer advertising, foodservice advertising, public relations, and administrative costs. Expenses will be covered by both assessment income and reserves.

Estimated assessment income is approximately $1,182,730 for the 1992 fiscal period based on handler receipts of 57,192 tons of assessable olives during the 1991–92 crop year (August—July). This amount will be augmented by approximately $650,000 from reserve funds to enable the committee to pay its estimated expenses. The committee's reserves are well within the maximum amount authorized by the order—one fiscal year's expenses. Last year's assessment income was approximately $2,116,058 on receipts of 104,600 assessable tons.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on January 15, 1992 (57 FR 1663). That document contained a proposal to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through January 27, 1992. No comments were received.

It is found that the specific expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992 fiscal period for the program began on January 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable olives handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 932.225 is added to read as follows:

Note: This action will not appear in the Code of Federal Regulations.

§ 932.225 Expenses and assessment rate.

Expenses of $1,832,230 by the California Olive Committee are authorized, and an assessment rate of $20.68 per ton of assessable olives is established, for the fiscal year ending on December 31, 1992. Unexpended funds from the 1991 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13430 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–91–464]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Increase in Expenses for the Peanut Administrative Committee for the 1991–92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the level of authorized expenses under Marketing Agreement No. 146 for the

1991–92 fiscal period. The increase is needed for the Peanut Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect peanut handlers are subject to assessment. Funds to administer the peanut agreement program are derived from such assessments. This final rule increases the level of authorized expenditures incurred by the Peanut Administrative Committee for the crop year beginning July 1, 1991. This action will not impose additional costs on handlers as current crop conditions are projected to yield sufficient assessment funds to cover the increases in the budget. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing agreements and orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 (7 CFR part 998). Also, there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. Small agricultural producers also have been defined as those having annual receipts of less than $500,000. Some handlers who are signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e. July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts and are familiar with the committee's needs and with the costs for goods, services, and personnel for program operations. Thus, they are in a position to formulate appropriate budgets. Such budgets are discussed at industry-wide public meetings and all directly affected persons have an opportunity to participate and provide input into their formulation. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

A final rule establishing administrative expenses in the amount of $985,000 for the committee for the crop year ending June 30, 1992, was published in the **Federal Register** on May 14, 1991 (56 FR 22108).

The committee met on December 12, 1991, and reviewed a proposal to increase the 1991–92 budget by $24,258. This increase provides: (1) $10,000 for the purchase of new computer equipment; and (2) $14,258 for committee staff salary bonuses recognizing the increased work effort of each staff member during the 1991 calendar year in handling a record number of indemnification claims.

Thus, the Peanut Administrative Committee 1991–92 budget of $985,000 is increased by $24,258 to $1,009,258. This increase in budgeted expenses for the 1991–92 fiscal period was approved unanimously by the committee, the agency responsible for local administration of the marketing agreement.

This action will not impose additional costs on handlers as current crop conditions are projected to yield sufficient assessment funds to cover the increases in the budget. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on February 3, 1992 (57 FR 3965). This document contained a proposal to amend § 998.404 to increase the level of authorized expenses. This rule provided that interested persons could file comments through February 13, 1992. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have approval for this recommended expense increase.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is hereby amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.404 is amended by revising paragraph (a) to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 998.404 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1991, shall be in the amount of $1,009,258, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the

marketing agreement, determine to be appropriate.

* * * * *

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-13424 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-109-AD; Amendment 39-8271; AD 92-10-51]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) T92-10-51 that was sent previously to all known U.S. owners and operators of Lockheed Model L-1011-385 airplanes by individual telegrams. This AD requires a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. This amendment is prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. Loss of a single pin could result in an increased load on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

DATES: Effective June 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-10-51, issued May 11, 1992, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 10, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-109-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE-160A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: On May 11, 1992, the FAA issued telegraphic AD T92-10-51, applicable to Lockheed Model L-1011-385 series airplanes, which requires an inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That action was prompted by a recent report that, during an inspection of the horizontal stabilizer control system, an operator of a Model L-1011-385 series airplane found that one of the four stabilizer actuators was detached from the stabilizer box. Further investigation revealed that the lower actuator pin had completely fractured, allowing the actuator rod end to pull free from the fitting. The flanged end of the pin was in place in the fitting; however, the threaded end of the pin had migrated out of the other lug until the actuator tore out of the fitting. Stabilizer inputs had caused the free end of the actuator to do considerable damage to the fitting, the bearings, and the remains of the pin. There were no indications or reports of any stabilizer abnormalities.

The operator inspected the airplane's remaining three pins and found that two of the pins were also cracked, but were still carrying load. Magnaflux inspection of one of the pins showed a longitudinal crack 11/16 inch long through the pin. Subsequently, an eddy current inspection was used to confirm this crack. Another pin showed several crack indications, but these were in the inner surface only and did not extend through to the outer surface.

Further investigation of this operator's fleet revealed that a total of 12 pins were cracked out of 17 examined. All four pins on two of these airplanes examined by magnaflux and/or visual inspection showed indications of longitudinal cracks.

These stabilizer actuators are the only means of airplane pitch control. The loss of a single pin is not detectable by pre-flight inspection or pre-takeoff controllability checks. Although the loss of one pin will not cause degradation of control authority, it could result in an increased load on the remaining pins. This condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T92-10-51 to prevent loss of pitch control due to failure of the horizontal stabilizer lower actuator attach pins. The AD requires a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary.

This is considered to be interim action. The FAA is considering further rulemaking to require non-destructive inspection of the actuator pins for cracks.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 11, 1992, to all known U.S. owners and operators of Lockheed Model L-1011-385 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–109–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–10–51. Lockheed Aeronautical Systems Company-Georgia: Amendment 39–8271. Docket 92–NM–109–AD.

Applicability: Model L–1011–385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of airplane pitch control, accomplish the following:

(a) Prior to the accumulation of 12,000 landings, or within 3 days after the effective date of this AD, whichever occurs later, accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Gain access to the lower end of the stabilizer hydraulic actuators (four per airplane) where they attach to the front spar of the horizontal stabilizer center box structure at Fuselage Station FS 1875.

(2) Inspect for missing, sheared, or deformed stabilizer lower actuator attach pins, part number 1563117–101 (one per actuator).

(3) If any pin is missing, sheared, or deformed, replace the pin prior to further flight.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta ACO.

Note.—Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 24, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92–10–51, issued on May 11, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 28, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13502 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–8]

Amended Transition Area; Albany, OR

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: TheFederal Aviation Administration established a 700-foot transition area at Albany, Oregon, on October 2, 1991. This action amends the airspace designation of the Albany Transition Area previously published in the **Federal Register**, by correcting a typographical error and clarifying the limits of the transition area.

EFFECTIVE DATE: 0901 UTC July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98055–4056; Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

The FAA established a 700-foot Transition Area at Albany, Oregon, on October 2, 1991 (FR Doc. 91–23664, Airspace Docket No. 91–ANM–8, 56 FR 49843). A typographical error was discovered in the airspace designation. This action corrects that error. This action also adds wording to the description which more clearly describes the Transition Area. The airspace designation for the transition area, as amended, will be published in section 71.181 of Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations corrects the reference "Cowalis, Oregon VDR/DME" to "Corvallis, Oregon VOR/DME," in the airspace designation of the Albany Transition Area. This amendment also clarifies the limits of the transition area by defining the extent of the airspace on either side of the Corvallis VOR/DME 048" radial. Because this is a minor amendment in which the public is not particularly interested, notice and public procedure under 5 U.S.C. section 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

ANM OR TA Albany, Oregon [Revised]

That airspace extending upward from 700 feet above the surface within a 6.1 mile radius of the Albany, Oregon Airport and within 1.7 miles either side of the Corvallis, Oregon VOR/DME 048° radius extending from the 6.1 mile radius to the Corvallis VOR/DME; excluding that airspace within the Eugene, Oregon, 700 foot transition area.

* * * * *

Issued in Seattle, Washington, on May 26, 1992.

Helen M. Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–13507 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 26885; Amdt. No. 370]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: June 25, 1992 at 0901 G.m.t.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Air traffic control, Aircraft, Airspace, Alaska, Navigation (air), Puerto Rico.

Issued in Washington, DC on May 26, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective on June 25, 1992 at 0901 G.m.t.:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 370 EFFECTIVE DATE, JUNE 25, 1992

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

IS AMENDED TO READ IN PART

GLINA, NM FIX	BOLES, NM VOR/DME	
VIA BWS VOR/DME 351		#*13000
*9900 - MOCA		MAA-24000
#RADAR REQUIRED WHEN IN HOLLOMAN APCH CTL ARSPC.		
INT CNX VORTAC 315 & OTO VOR 168	GLINA, NM FIX	
VIA OTO VOR 168		*12000
*9000 - MOCA		
NEWMAN, TX VORTAC	TURQE, NM FIX	*8000
*6700 - MOCA		MAA-17500
TURQE, NM FIX	BOLES, NM VOR/DME	#*8000
*6600 - MOCA		MAA-17500
#MAA 11000 MSL WHEN R-5103C IN USE		
#ROUTE NOT USABLE WHEN R-5103A OR R-5103B IN USE.		
#RADAR RQRD WHEN IN HOLLOMAN APCH CTL AIRSPACE.		

§95.1001 DIRECT ROUTES-U.S.

PUERTO RICO ROUTES
IS AMENDED TO READ IN PART

ROUTE 8		
ARECA, PR FIX	*PONCE, PR VOR/DME	16000
*13000 - MCA PONCE VOR/DME, W BND		
*PONCE, PR VOR/DME	TUUNA, PR FIX	**6000
*13000 - MCA PONCE VOR/DME, W BND		
**4500 - MOCA		

§95.6002 VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

DICKINSON, ND VORTAC	BISMARCK, ND VOR/DME	4600
BISMARCK, ND VOR/DME	*OSERT, ND FIX	**4000
*5300 - MRA		
**3300 - MOCA		

§95.6004 VOR FEDERAL AIRWAY 4

IS AMENDED TO READ IN PART

LEXINGTON, KY VORTAC	CICKE, KY FIX	5000
CICKE, KY FIX	NEWCOMBE, KY VORTAC	3100

§95.6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

PALMDALE, CA VORTAC	EFFOR, CA FIX	6000
EFFOR, CA FIX	HELDE, CA FIX	
	E BND	7500
	W BND	6000
HELDE, CA FIX	HECTOR, CA VORTAC	7500

FROM	TO	MEA

§95.6026 VOR FEDERAL AIRWAY 26

IS AMENDED TO READ IN PART

PHILIP, SD VOR/DME	PIERRE, SD VORTAC	*4400
*3700 - MOCA		

§95.6069 VOR FEDERAL AIRWAY 69

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6078 VOR FEDERAL AIRWAY 78

IS AMENDED TO READ IN PART

WATERTOWN, SD VORTAC	CLAPS, MN FIX	*4000
*3400 - MOCA		

§95.6097 VOR FEDERAL AIRWAY 97

IS AMENDED TO READ IN PART

LEXINGTON, KY VORTAC	DARKS, KY FIX	5000
DARKS, KY FIX	CINCINNATI, KY VORTAC	2700

§95.6116 VOR FEDERAL AIRWAY 116

IS AMENDED TO READ IN PART

PEORIA, IL VORTAC	PONTIAC, IL VORTAC	2400
PONTIAC, IL VORTAC	JOLIET, IL VORTAC	2500

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6134 VOR FEDERAL AIRWAY 134

IS AMENDED TO READ IN PART

*FAIRFIELD, UT VORTAC	**CARBON, UT VOR/DME	#12700
*10800 - MCA FAIRFIELD VORTAC, E BND		
**10200 - MCA CARBON VOR/DME, W BND		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		

§95.6143 VOR FEDERAL AIRWAY 143

IS AMENDED TO READ IN PART

POTTSTOWN, PA VORTAC	YARDLEY, PA VORTAC	6900

FROM	TO	MEA

§95.6165 VOR FEDERAL AIRWAY 165

IS AMENDED TO READ IN PART

OLYMPIA, WA VORTAC *4000 - MRA	*CARRO, WA FIX	4000

§95.6178 VOR FEDERAL AIRWAY 178

IS AMENDED TO READ IN PART

NEW HOPE, KY VOR/DME	MAUDD, KY FIX	2700
MAUDD, KY FIX	LEXINGTON, KY VORTAC	5000
LEXINGTON, KY VORTAC	TRENT, KY FIX	5000

§95.6181 VOR FEDERAL AIRWAY 181

IS AMENDED TO READ IN PART

SIOUX FALLS, SD VORTAC *4000 - MRA **3200 - MOCA	*OBITT, SD FIX	**3700

§95.6189 VOR FEDERAL AIRWAY 189

IS AMENDED TO READ IN PART

FRANKLIN, VA VORTAC *10000 - MRA	*WAIKS, VA FIX	3000
WAIKS, VA FIX *1500 - MOCA	HOPEWELL, VA VORTAC	*2000

§95.6190 VOR FEDERAL AIRWAY 190

IS AMENDED TO READ IN PART

ACOMA, NM FIX	*ALBUQUERQUE, NM VORTAC	**9000
*11500 - MCA ALBUQUERQUE VORTAC, NE BND *11500 - MCA ALBUQUERQUE VORTAC, SW BND **8400 - MOCA		
LAS VEGAS, NM VORTAC *9000 - MOCA	DALHART, TX VORTAC	*10000

§95.6223 VOR FEDERAL AIRWAY 223

IS AMENDED TO READ IN PART

FLAT ROCK, VA VORTAC *7000 - MRA	*HANEY, VA FIX	2800

§95.6258 VOR FEDERAL AIRWAY 258

IS AMENDED TO READ IN PART

BECKLEY, WV VORTAC	ZOOMS, WV FIX	6500
ZOOMS, WV FIX	ROANOKE, VA VORTAC	6000

FROM	TO	MEA

§95.6260 VOR FEDERAL AIRWAY 260

IS AMENDED TO READ IN PART

HOPEWELL, VA VORTAC *10000 - MRA **1500 - MOCA	*WAIKS, VA FIX	**2000
WAIKS, VA FIX	FRANKLIN, VA VORTAC	3000

§95.6262 VOR FEDERAL AIRWAY 262

IS AMENDED TO READ IN PART

BRADFORD, IL VORTAC	MOTIF, IL FIX	2700
MOTIF, IL FIX	JOLIET, IL VORTAC	2500

IS AMENDED TO DELETE

JOLIET, IL VORTAC	BOJAK, IL FIX	2500

§95.6286 VOR FEDERAL AIRWAY 286

IS AMENDED TO READ IN PART

DERIN, WV FIX	TEAKK, VA FIX	13000
TEAKK, VA FIX *6100 - MOCA	CASANOVA, VA VORTAC	*6600

§95.6287 VOR FEDERAL AIRWAY 287

IS AMENDED TO READ IN PART

OLYMPIA, WA VORTAC *4000 - MRA *5400 - MCA CARRO FIX, N BND	*CARRO, WA FIX	4000
CARRO, WA FIX *6000 - MRA *7000 - MCA LOFAL FIX, S BND	*LOFAL, WA FIX	7000
LOFAL, WA FIX	PAINE, WA VOR/DME	6000
PAINE, WA VOR/DME *1700 - MOCA	ISLND, WA FIX	*5000
ISLND, WA FIX	BELLINGHAM, WA VORTAC	5000

§95.6349 VOR FEDERAL AIRWAY 349

IS AMENDED TO READ IN PART

ISLND, WA FIX	BELLINGHAM, WA VORTAC	5000

§95.6375 VOR FEDERAL AIRWAY 375

IS AMENDED TO READ IN PART

GORDONSVILLE, VA VORTAC *7000 - MRA	*HANEY, VA FIX	4500

FROM	TO	MEA
§95.6439 VOR FEDERAL AIRWAY 439 IS AMENDED TO READ IN PART		
DICKINSON, ND VORTAC	WILLISTON, ND VORTAC	*5600
*4000 - MOCA		
§95.6444 VOR FEDERAL AIRWAY 444 IS AMENDED TO READ IN PART		
BRONX, AK FIX	EVANSVILLE, AK NDB	*10000
*9100 - MOCA		
EVANSVILLE, AK NDB	BETTLES, AK VORTAC	*3500
*3500 - MOCA		
BETTLES, AK VORTAC	*CYCLE, AK FIX	**3500
*4400 - MCA CYCLE FIX, SE BND		
**3500 - MOCA		
CYCLE, AK FIX	BRION, AK FIX	*6000
*5200 - MOCA		
BRION, AK FIX	LIVEN, AK FIX	*9000
*5200 - MOCA		
BIG DELTA, AK VORTAC	NORTHWAY, AK VORTAC	*8000
*7800 - MOCA		
§95.6453 VOR FEDERAL AIRWAY 453 IS AMENDED TO READ IN PART		
GORDONSVILLE, VA VORTAC	CASANOVA, VA VORTAC	4500
§95.6493 VOR FEDERAL AIRWAY 493 IS AMENDED TO READ IN PART		
LEXINGTON, KY VORTAC	BEAER, KY FIX	5000
BEAER, KY FIX	YORK, KY VORTAC	3000

FROM	TO	MEA
§95.6509 VOR FEDERAL AIRWAY 509 IS ADDED TO READ		
ST PETERSBURG, FL VORTAC	HULLA, FL FIX	3000
HULLA, FL FIX	HALLR, FL FIX	3000
§95.6511 VOR FEDERAL AIRWAY 511 IS ADDED TO READ		
LAKELAND, FL VORTAC	HALLR, FL FIX	*3000
*2000 - MOCA		
HALLR, FL FIX	MIKKI, FL FIX	*9000
*1600 - MOCA		
MIKKI, FL FIX	BISCAYNE BAY, FL VORTAC	*6000
*1400 - MOCA		
§95.6595 VOR FEDERAL AIRWAY 595 IS ADDED TO READ		
*MEDFORD, OR VORTAC	CUTTR, OR FIX	
	NE BND	10500
	SW BND	6100
*5100 - MCA MEDFORD VORTAC, NE BND		
CUTTR, OR FIX	COPPR, OR FIX	10500
COPPR, OR FIX	DRACK, OR FIX	
	NE BND	9900
	SW BND	10500
DRACK, OR FIX	*REDMOND, OR VORTAC	
	NE BND	6200
	SW BND	10500
*7900 - MCA REDMOND VORTAC, SW BND		

FROM	TO	MEA	MAA
§95.7036 JET ROUTE NO. 36			
IS AMENDED TO READ IN PART			
MINEO, PA FIX	LAKE HENRY, PA VORTAC	18000	37000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-4			
IS AMENDED BY ADDING			
LEXINGTON, KY VORTAC	NEWCOMBE, KY VORTAC	37	LEXINGTON
V-493			
IS AMENDED BY ADDING			
LEXINGTON, KY VORTAC	YORK, KY VORTAC	41	LEXINGTON

[FR Doc. 92-13378 Filed 6-8-92; 8:45 am]
BILLING CODE 4910-13-C

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

25 CFR Part 700

New Lands Grazing Regulations

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Final rule.

SUMMARY: These rules amend grazing regulations for the lands which have been acquired pursuant to Public Law 96-305 for the use of Navajo families required to relocate under Public Law 93-531. The amendment has been requested by the Department of Justice because the government is involved in mediating a long-standing land dispute between the Hopi Tribe and the Navajo Nation. The intended effect of the rule is to extend the deadline for application for New Lands Grazing permits.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at (602) 779-2721.

SUPPLEMENTARY INFORMATION: On April 2, 1991, the Office of Navajo and Hopi Indian Relocation (ONHIR) published in the **Federal Register** (Vol. 56 No. 63 at p. 13396) a final rule regarding New Lands Grazing Regulations. The rule, 25 CFR 700.709(d), provided that certain persons who were listed as eligible to receive grazing permits would be given priority status to be issued such permits provided they file an application for New Lands Grazing Permit by June 1, 1992, or thereafter lose their priority. Since publication of the regulation, the United States Court of Appeals for the Ninth Circuit ordered that certain cases concerning relocation issues, *Jenny Manybeads, et. al.* v. *United States of America*, 9th Circuit No. 90-15003, and *Vernon Masayesva* v. *Leonard Haskie*, 9th Circuit No. 90-15304, be remanded for settlement negotiations under the authority of United States Magistrate Judge Harry R. McCue. The settlement negotiations are still in progress. It has been determined by the Department of Justice that the June 1, 1992, deadline to apply for New Lands Grazing Permits as required by 25 CFR 700.709(d) could be detrimental to the settlement process. The Office of Navajo and Hopi Indian Relocation has been requested by the Department of Justice, the Department of Interior and the United States Magistrate to take immediate action to extend the deadline of June 1, 1992 for New Lands Grazing Applications. The date for application will be extended until a new date for closure of receipt of applications is determined. A new rule will be published in the **Federal Register** giving notice of that date.

Preamble: The primary author of this document is Paul Tessler, Legal Counsel, Office of Navajo & Hopi Indian Relocation.

It has been determined that this final rule is not a major rule as that term is defined in Executive Order 12291, because it will have a limited economic impact on a small number of people and does not require a regulatory analysis. It has been determined that the final rule will not have a significant economic impact on a substantial number of small entities with the meaning of Regulatory Flexibility Act, 5 U.S.C., 601 et. seq.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The rule does not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C., 3501 et seq.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of Interest, Freedom of Information, Grant program—Indians, Indian—claims, Privacy, Real property acquisition, Relocation assistance, and New Lands Administration.

Accordingly, the Office is amending chapter IV as follows:

1. Authority citation for part 700 continues to read as follows:

Authority: Pub. L. 99-590; Pub. L. 93-531, 88 Stat. 1712 as amended by Pub. L. 96-305, 94 Stat. 929, Pub. L. 100-666, 102 Stat. 3929 (25 U.S.C. 640d).

2. Section 700.709 is amended by revising paragraph (d) to read as follows:

§ 700.709 Grazing privileges.

* * * * *

(d) Persons on this list must file an application for a New Lands Grazing Permit. The Commissioner will determine when the application period will close and will publish notice of that date. After the close of the period for application, the Commissioner, in his sole discretion, may issue permits to individuals if it is determined that to do so will facilitate relocation.

* * * * *

Dated: June 3, 1992.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 92-13447 Filed 6-8-92; 8:45 am]

BILLING CODE 7560-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 208

[DoD Instruction 4650.4]

Federal Radionavigation Plan

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR part 208 (DoD Instruction 4650.4). This part has served the purpose for which it was issued and is no longer valid.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 208

Armed forces; Radio.

PART 208—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 131, 32 CFR part 208 is removed.

Dated: June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-13468 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Schedule for Rating Disabilities; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations, which were published Thursday, August 11, 1988, (53 FR 30261-4), and Friday, December 1, 1989, (54 FR 49754-5). The regulations related to tables in the

Schedule for Rating Disabilities for evaluating impairment of muscle function (diplopia) and diseases of the peripheral nerves.

EFFECTIVE DATE: September 12, 1988 for diagnostic codes 6091 and 6092, and November 24, 1989 for diagnostic codes 8510 through 8719.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: On August 11, 1988, VA amended § 4.84a in its rating schedule by publishing a new method for evaluating diplopia under diagnostic code 6090. The disabilities classified under diagnostic codes 6091 (symblepharon) and 6092 (diplopia due to limited muscle function) were inadvertently omitted from the schedule as a result of this change which was effective September 12, 1988. Similarly, effective November 24, 1989, VA amended § 4.124a by publishing a correction to the table of Diseases of the Peripheral Nerves on December 1, 1989. The neurological conditions classified under diagnostic codes 8510 through 8719 were also omitted inadvertently at that time. These omissions are hereby restored.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Dated: May 22, 1992.

B. Michael Berger,

Director, Records Management Service.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is corrected by making the following correcting amendments:

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. In 4.84a, the chart entitled "Ratings for Impairment of Muscle Function" is revised to read as follows:

§ 4.84a Schedule of ratings—eye.

* * * * *

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION

[6090 Diplopia (double vision)]

Degree of diplopia	Equivalent visual acuity
(a) Central 20°	5/200
(b) 21° to 30°:	
(1) Down	15/200
(2) Lateral	20/100
(3) Up	20/70

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION—Continued

[6090 Diplopia (double vision)]

Degree of diplopia	Equivalent visual acuity
(c) 31° to 40°:	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

Notes: (1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

6091 Symblepharon.

Rate as limited muscle function, diagnostic code 6090.

6092 Diplopia, due to limited muscle function.

Rate as diagnostic code 6090.

3. In 4.124a, the chart entitled "Diseases of the Peripheral Nerves" is revised to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

* * * * *

DISEASES OF THE PERIPHERAL NERVES

Schedule of ratings	Rating	
	Major	Minor
The term "incomplete paralysis," with this and other peripheral nerve injuries, indicates a degree of lost or impaired function substantially less than the type picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. The ratings for the peripheral nerves are for unilateral involvement; when bilateral, combine with application of the bilateral factor.		

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating	
	Major	Minor
Upper radicular group (fifth and sixth cervicals)		
8510 Paralysis of:		
Complete; all shoulder and elbow movements lost or severely affected, hand and wrist movements not affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8610 Neuritis.		
8710 Neuralgia.		
Middle radicular group		
8511 Paralysis of:		
Complete; adduction, abduction and rotation of arm, flexion of elbow, and extension of wrist lost or severely affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8611 Neuritis.		
8711 Neuralgia.		
Lower radicular group		
8512 Paralysis of:		
Complete; all intrinsic muscles of hand, and some or all of flexors of wrist and fingers, paralyzed (substantial loss of use of hand)	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8612 Neuritis.		
8712 Neuralgia.		
All radicular groups		
8513 Paralysis of:		
Complete	90	80
Incomplete:		
Severe	70	60
Moderate	40	30
Mild	20	20
8613 Neuritis.		
8713 Neuralgia.		
The musculospiral nerve (radial nerve)		
8514 Paralysis of:		
Complete; drop of hand and fingers, wrist and fingers perpetually flexed, the thumb adducted falling within the line of the outer border of the index finger; can not extend hand at wrist, extend proximal phalanges of fingers, extend thumb, or make lateral movement of wrist; supination of hand, extension and flexion of elbow weakened, the loss of synergic motion of extensors impairs the hand grip seriously; total paralysis of the triceps occurs only as the greatest rarity	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	20	20

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating	
	Major	Minor
8614 Neuritis.		
8714 Neuralgia.		
Note: Lesions involving only "dissociation of extensor communis digitorum" and "paralysis below the extensor communis digitorum," will not exceed the moderate rating under code 8514.		
The median nerve		
8515 Paralysis of:		
Complete; the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (ape hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanx of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	10	10
8615 Neuritis.		
8715 Neuralgia.		
The ulnar nerve		
8516 Paralysis of:		
Complete; the "griffin claw" deformity, due to flexor contraction of ring and little fingers, atrophy very marked in dorsal interspace and thenar and hypothenar eminences; loss of extension of ring and little fingers cannot spread the fingers (or reverse), cannot adduct the thumb; flexion of wrist weakened	60	50
Incomplete:		
Severe	40	30
Moderate	30	20
Mild	10	10
8616 Neuritis.		
8716 Neuralgia.		
Musculocutaneous nerve		
8517 Paralysis of:		
Complete; weakness but not loss of flexion of elbow and supination of forearm	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
8617 Neuritis.		
8717 Neuralgia.		
Circumflex nerve		
8518 Paralysis of:		
Complete; abduction of arm is impossible, outward rotation is weakened; muscles supplied are deltoid and teres minor	50	40
Incomplete:		
Severe	30	20
Moderate	10	10
Mild	0	0
8618 Neuritis.		
8718 Neuralgia.		
Long thoracic nerve		
8519 Paralysis of:		
Complete; inability to raise arm above shoulder level, winged scapula deformity	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
Note: Not to be combined with lost motion above shoulder level.		
8619 Neuritis		
8719 Neuralgia.		
Note: Combined nerve injuries should be rated by reference to the major involvement, or if sufficient in extent, consider radicular group ratings.		

DISEASES OF THE PERIPHERAL NERVES—Continued

Schedule of ratings	Rating
Sciatic nerve	
8520 Paralysis of:	
Complete; the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost	80
Incomplete:	
Severe, with marked muscular atrophy	60
Moderately severe	40
Moderate	20
Mild	10
8620 Neuritis.	
8720 Neuralgia.	
External popliteal nerve (common peroneal)	
8521 Paralysis of:	
Complete; foot drop and slight droop of first phalanges of all toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8621 Neuritis.	
8721 Neuralgia.	
Musculocutaneous nerve (superficial peroneal)	
8522 Paralysis of:	
Complete; eversion of foot weakened	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8622 Neuritis.	
8722 Neuralgia.	
Anterior tibial nerve (deep peroneal)	
8523 Paralysis of:	
Complete; dorsal flexion of foot lost	30
Incomplete:	
Severe	20
Moderate	10
Mild	0
8623 Neuritis.	
8723 Neuralgia.	
Internal popliteal nerve (tibial)	
8524 Paralysis of:	
Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa, plantar flexion of foot is lost	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8624 Neuritis.	
8724 Neuralgia.	
Posterior tibial nerve	
8525 Paralysis of:	
Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired	30
Incomplete:	
Severe	20
Moderate	10
Mild	10
8625 Neuritis.	
8725 Neuralgia.	
Anterior crural nerve (femoral)	
8526 Paralysis of:	
Complete; paralysis of quadriceps extensor muscles	40
Incomplete:	
Severe	30
Moderate	20
Mild	10
8626 Neuritis.	
8726 Neuralgia.	
Internal saphenous nerve	
8527 Paralysis of:	
Severe to complete	10
Mild to moderate	0
8627 Neuritis.	
8727 Neuralgia.	
Obturator nerve	
8528 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8628 Neuritis.	
8728 Neuralgia.	
External cutaneous nerve of thigh	
8529 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8629 Neuritis.	
8729 Neuralgia.	
Ilio-inguinal nerve	
8530 Paralysis of:	
Severe to complete	10
Mild or moderate	0
8630 Neuritis.	
8730 Neuralgia.	
8540 Soft-tissue sarcoma (of neurogenic origin)	100

	Rating

Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

* * * * *

[FR Doc. 92-13189 Filed 6-8-92; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF13

Dependents' Education; Verification of Pursuit and Continued Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: These amended regulations require most students receiving Dependents' Educational Assistance to submit a monthly verification of pursuit and enrollment or continued enrollment in order to receive educational assistance. The intent of these regulations is to prevent overpayments to these students. The amended regulations also contain a change to the effective date for reductions in Dependents' Educational Assistance.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 49735 through 49737 of the **Federal Register** of October 1, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to require individuals receiving Dependents' Educational Assistance to submit monthly verifications of pursuit and enrollment. Individuals were given 30 days to submit comments, suggestions or objections. VA received one letter from an educational organization containing objections.

At present, veterans pursuing a program of education under the Montgomery GI Bill—Active Duty have to submit a monthly verification of pursuit before receiving their monthly benefit payment. The letter writer examined this program in determining how he thought this same requirement would work in Dependents' Educational Assistance.

He pointed out that some overpayments in the Montgomery GI Bill—Active Duty are caused by VA (Department of Veterans Affairs) error. Others are caused by veterans who do not verify their own pursuit correctly. The writer suggested that VA, in order to make monthly verifications of pursuit appear to be cost effective for Dependents' Educational Assistance, was including the cost reductions caused by these errors.

VA wishes to assure the public that this is not so. When VA did its study, it examined the complete records of many veterans. The department discovered that as of the time of the study 7.47% of the overpayments under the Montgomery GI Bill—Active Duty were due to VA error. Claimant error accounted for 10.27% of the overpayments. The study does not count the reductions in benefits made by these errors as part of the cost savings to be realized by implementing monthly verifications of pursuit for Dependents' Educational Assistance, because when VA discovers these errors it corrects them. Neither does the study suggest that monthly verifications of pursuit will eliminate all overpayments resulting from these or other causes. It does show that there will be substantial reductions in the amount of overpayments under Dependents' Educational Assistance.

VA is making the amended regulations final. However, the final regulations differ somewhat from those which were proposed.

Subsequent to the proposal of October 1, 1991, VA made final amended regulations which implement some provisions of the Veterans' Educational Assistance Amendments of 1991. One of those amended regulations was 38 CFR 21.4135(s). The amended § 21.4135(s) which appears here reflects the changes made by that amendment.

Furthermore, the authority citations printed in the proposal of October 1, 1991, reflected the way in which the sections of title 38, U.S. Code were numbered before the enactment of Public Law 102-83. Since Public Law 102-83 renumbered those cited sections, the authority citations reflect the numbering system introduced by that law.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Paperwork Reduction Act

The amendment to § 21.4204 requires an increased information collecting burden for individuals, while at the same time reducing the information burden for educational institutions. Currently, dependents who are enrolled in courses not leading to a standard college degree and those pursuing apprenticeships and other on-job training certify their continued pursuit to VA monthly. Those enrolled in courses leading to a standard college degree do not. Requiring all to submit a monthly certification will result in a public report burden of 5 minutes per response and a total of an additional 20,500 burden hours during fiscal year 1992. Since VA projects a small but steady decline in those receiving dependents' educational assistance in subsequent fiscal years, the number of annual hours will decline also during those years.

All individuals receiving benefits under the Montgomery GI Bill—Active Duty must submit this monthly certification. The information collection has been approved under OMB number 2900-0465. As required by section 3504(h) of the Paperwork Reduction Act, VA submitted to OMB (the Office of Management and Budget) a request that it modify its current approval to include the additional hours required by these amended regulations. This request has been approved.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-

education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 21 is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501(a).

2. In § 21.4135, paragraph (s) and its authority citation are revised to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).* (1) VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 5113, 3680)

* * * * *

3. In § 21.4138 paragraph (e) is revised and its authority citation is added to read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in § 21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

* * * * *

4. In § 21.4204 paragraph (a) and its authority citation are revised to read as follows:

§ 21.4204 Periodic certifications.

* * * * *

(a) *Reports by eligible persons.* An eligible person enrolled in a course which leads to a standard college degree, excepting eligible persons pursuing the course on a less than half-time basis, must verify each month his or her continued enrollment in and pursuit of his or her courses. In the case of an eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the eligible person's completion of course as scheduled or earlier termination date, will be accepted to terminate payments accordingly. Reports by other eligible persons will be submitted in accordance with § 21.4203 (e), (f) or (g).

(Authority: 38 U.S.C. 1780(g), 3103)

* * * * *

5. Section 21.4204 is amended by adding the OMB control number to the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2900-0465.)

[FR Doc. 92-13194 Filed 6-8-92; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AF75

Veterans Education; Verifying Enrollments Telephonically

AGENCY: Department of Veterans Affairs.

ACTION: Final Regulations.

SUMMARY: Currently, the veterans receiving educational assistance under

the Montgomery GI Bill—Active Duty must verify their pursuit of their program periodically. The regulation requiring that verification contains wording which implies that the verification must be done on paper. VA (Department of Veterans Affairs) intends to start a pilot program which will let some veterans verify their pursuit by toll-free telephone. The amended regulation will allow VA to do this.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Currently, all veterans receiving educational assistance under the Montgomery GI Bill—Active Duty must periodically verify their pursuit of their program of education. Most veterans do this monthly. Payments are not issued until VA receives the verification. The wording of the regulation which requires this verification states that it must be signed by the veteran or servicemember. Use of the word "signed" implies that the verification be on paper. VA has been using paper verifications.

VA believes that the payments of educational assistance may be expedited if verification could be carried out over a telephone provided that there were security procedures which would permit only the veteran or servicemember to make the verification and would prevent the veteran or servicemember from providing data that would affect the claims of others. VA is planning to test this method of verification by permitting veterans training in California to submit verifications by telephone. This system should be ready to test in 1992. If successful, VA will consider expanding it to other areas of the nation. In order to allow VA to test this method of verification, VA is amending § 21.7154.

VA is amending the regulations without prior public comment because this change is procedural only. While providing a verification system which should be quicker and more convenient for the veteran, it will not change the information required from the veteran in order for VA to issue him or her a payment.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The information collection contained in the monthly verification has been approved under OMB number 2900–0465. While the proposed regulation will permit a change in the medium used to collect information, the amount and content of the information will not be changed.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 15, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

2. In § 21.7154 paragraph (a)(2)(ii), (iii) and the authority citation for paragraph (a) are revised to read as follows:

§ 21.7154 Pursuit and absences.

* * * * *

(a) *Requirements for all veterans and servicemembers.*

* * * * *

(2) * * *

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the veteran or servicemember on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period, and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98–525, Pub. L. 99–576)

* * * * *

[FR Doc. 92–13190 Filed 6–8–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL 014–5242; FRL–4140–6]

Approval and Promulgation of Implementation Plans Alabama: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Alabama State Implementation Plan (SIP). These revisions were submitted to EPA by the State of Alabama through the Alabama Department of Environmental Management on October 22, 1990, in response to the requirement that states either revise their SIP to include the federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate the federal NO_2 increments into the Alabama PSD regulations.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is

delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347–2864 or (FTS) 257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA published a final rule for the Prevention of Significant Deterioration (PSD) for Nitrogen Oxides. States could either submit a revision to the SIP to incorporate the new nitrogen dioxide (NO_2) increments for PSD or request delegation of authority for the revised federal PSD Regulations. On September 19, 1990, the Alabama Environmental Management Commission adopted revisions to the Alabama PSD regulations which incorporated the NO_2 increments. The Alabama Department of Environmental Management submitted the revisions to the Alabama PSD regulations to EPA on October 22, 1990, which became state effective on November 1, 1990. Alabama requested that the revisions be adopted as part of the federally approved SIP. EPA is today approving the following revisions:

335–3–14–.04 Air Permits Authorizing Construction in Clean Air Areas

(2)(c)4. The terms "nitrogen oxides" and "minor source baseline" have been added to an applicability rule for sulfur dioxide and particulate matter.

(2)(m)1. Baseline concentration has been redefined to incorporate minor source baseline date and major source baseline date.

(2)(m)2. Exemptions from baseline concentration have been redefined to incorporate minor source baseline date and major source baseline date.

(2)(n)1. Major source baseline date has been redefined to be January 6, 1975, for particulate matter and sulfur dioxide, and February 8, 1988, for nitrogen dioxide.

(2)(n)2. Minor source baseline date has been defined in terms of the trigger date, and the trigger date has been defined as August 7, 1977, for particulate matter and sulfur oxides, and February 8, 1988, for nitrogen dioxide.

(2)(n)3. Has been renumbered from (2)(n)2. and "base line date established" has been redefined to incorporate minor source baseline date.

(2)(o) "Baseline Area" has been redefined to include minor source baseline date.

(3) The new federal NO_2 increments have been added for Class I, Class II, and Class III areas.

(5)(a)5. Excluded concentrations is redefined to incorporate nitrogen oxides.

(15)(e) Class I Variances are redefined to incorporate nitrogen oxides.

Chapter 2 of the Alabama State Implementation Plan, Control Strategy, has been revised to contain a new section; 4.2.3, Statewide—Nitrogen Oxides.

In addition to the SIP submittal, the State in a letter dated April 30, 1991, has committed to the following minimum program elements as required by EPA's guidance of August 17, 1990. The NO_x increment guidance required the following minimum program elements:

1. Analysis—Agencies must require NO_2 increment consumption analysis for all major new or modified sources, and nitrogen oxides (NO_x) emissions from minor sources must be considered in those analyses.

2. Increment Consumption—Agencies must determine NO_2 increment consumption for the transition period between February 8, 1988, and the date the State program goes into effect, and conduct a periodic assessment of NO_2 increment status.

The revisions being approved meet all of the requirements for incorporating the federal NO_2 increments into the Alabama SIP.

Final Action

EPA is today approving the revisions to the Alabama PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. If, however, notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 30, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 52.50 is amended by adding paragraph (c)(58) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to include NO_2 increment requirements in Chapter 2 of the SIP and the PSD regulations, Chapter 335–3–14 of the Alabama Department of Environmental Management Administrative Code which was submitted on October 22, 1990.

(i) *Incorporation by reference.* (A) Revisions to 335–3–14–.04, "Air Permits Authorizing Construction in Clean Air Areas," of the Alabama Department of Enironmental Management Administrative Code, which became effective November 1, 1990.

(ii) *Other material.* (A) Letter dated October 22, 1990, from the Alabama Department of Environmental Management.

(B) Letter dated April 30, 1991, from the Alabama Department of Environmental Management regarding minimum program elements.

3. Section 52.65 is added to read as follows:

§ 52.65 Control Strategy: Nitrogen Oxides.

On October 22, 1990, the Alabama Department of Environmental Management submitted a revision to Chapter 2, Control Strategy, by adding subsection 4.2.3. This revision addressed the strategy Alabama is using to implement provisions of the Prevention of Significant Deterioration regulations for nitrogen oxides.

[FR Doc. 92–13385 Filed 6–8–92; 8:45am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FL–036–5$18; FRL–4095–1]

Approval and Promulgation of Implementation Plans Florida: Vehicle Anti-tampering

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). These revisions were submitted to EPA in two parts. The first part, regarding driving tampered vehicles on Florida roads and visible emissions from motor vehicles, was submitted on March 20, 1990. The second part was submitted on June 18, 1990, and prohibited the sale of tampered vehicles in Florida. This plan has been submitted by the FDER as an integral part of the program to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. These regulations meet all EPA requirements and therefore EPA is approving the SIP revisions.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Yasmin Yorker of EPA, Region IV (see EPA Region IV address below).

Copies of the materials submitted by Florida may be examined at the following locations during normal business hours:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Yasmin Yorker of the Region IV Air Programs Branch, at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On June 5, 1987, the Florida Legislature created the Motor Vehicle Emissions Study Commission. The Commission was charged with the responsibility of recommending an Inspection/Maintenance (I/M) program design that would be effective at both reducing vehicular emissions and protecting the health of the citizens of Florida. This was in response to two key issues: (1) Continued ozone nonattainment in various Florida counties, and (2) a Florida Department of Environmental Regulation (FDER) study that demonstrated that over 70% of the emissions of volatile organic compounds (VOCs) in Florida result from mobile sources.

The commission members visited various I/M programs throughout the country to evaluate alternative program designs. Public hearings were also conducted in the nonattainment counties to solicit citizen input. The Florida Motor Vehicle Study Commission delivered its report to the Governor of Florida on March 1, 1988. The report concluded that "A centralized, contractor-operated I and M program is best suited to Florida's needs." The report also addressed tampering, enforcement, compliance, fleets, waivers, and public education elements.

Following the study, the 1988 Florida Legislature passed chapter 88–129, Laws of Florida, entitled the Clean Outdoor Air Law (COAL). The law was amended by the 1989 Florida Legislature and is codified in chapter 325, Florida Statutes (F.S.), and section 316.2935, F.S. The FDER was charged by the COAL to develop test procedures, regulations and emission standards. This was done in two phases. Phase I involved the implementation of an I/M program in nonattainment counties pursuant to chapter 325, F.S. After a series of public hearings, the Florida Environmental Regulation Commission, on December 7, 1988, approved Florida Administrative Code, Chapter 17–242 (Mobile Source—Motor Vehicle Emissions Standards and Test Procedures). That rule was adopted by FDER by filing with the Florida Secretary of State on January 31, 1989, and was submitted to EPA on March 20, 1989. The approval of chapter 17–242 is being handled in a separate rulemaking. That program began operation in April 1991. All counties that are nonattainment for ozone or carbon monoxide (CO) require the program.

Phase II, which this notice is addressing, includes regulations adopted by FDER pursuant to section 316.2935 of the F.S. to address the tampering and visible emission problem in Florida (chapters 17–243 and 17–244). These regulations apply in all of the Florida counties, not just the ones designated nonattainment, and are resultant from EPA and FDER studies that found there is a significant automobile tampering problem in Florida as well as a visible automobile emissions problem. Also, the statewide prohibition against tampering would address the concerns of citizens in I/M program counties that tampered vehicles from other, non-I/M program counties were responsible for the air pollution problem in their counties.

On March 20, 1990, FDER submitted to EPA for approval, as part of the SIP, these two new regulations, chapter 17–243 (Tampering with Motor Vehicle Pollution Control Equipment) and 17–244 (Visible Emissions from Motor Vehicles). On June 18, 1990, FDER submitted to EPA for approval changes to chapter 17–243 which provides that beginning July 1, 1990, no person or motor vehicle dealer shall offer or display for sale or lease, sell, lease, or

transfer title to a motor vehicle in Florida that has been tampered with.

Chapter 17–243 of the Florida Administrative Code concerns tampering with motor vehicle air pollution control equipment. This rule specifically prohibits operating a vehicle on public roads if the emission control equipment has been tampered with. It also prohibits the sale, lease, or transfer of a tampered vehicle in Florida (June 18, 1990, submittal). All 1975 and newer vehicles, with a net vehicle weight (unloaded) less than 5,000 pounds or a gross vehicle weight (loaded including passengers and luggage) less than 10,000 pounds, are subject to this rule. Enforcement shall consist of a three point tampering check. The three components are the catalytic converter, fuel inlet restricter, and unvented fuel cap. Any person found violating this rule will be charged with a non-criminal traffic infraction.

Chapter 17–244 of the Florida Administrative Code concerns visible emissions from motor vehicles. This rule prohibits operating any gasoline powered vehicle on public roads that emits visible emissions for more than 5 continuous seconds. It also prohibits operating any diesel powered vehicle on public roads that emits visible emissions for more than 5 continuous seconds with exception if the vehicle is accelerating, lugging, or decelerating. The rule will be enforced by visual observations of law enforcement officers.

Final Action:

EPA is today approving revisions to the Florida SIP incorporating a statewide anti-tampering and visible emissions program. All of the revisions being approved are consistent with Agency policy. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with the requirements of the Act irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 16, 1991.

Patrick M. Tobin,

Acting, Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(69) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(69) Vehicle Anti-tampering and visible emissions regulations (Chapter 17–243 and Chapter 17–244 of the Florida Administrative Code respectively) which were submitted to EPA on March 20, 1990, and revisions to Chapter 17–243 submitted on June 18, 1990.

(i) *Incorporation by reference.*

(A) New Florida Administrative Code (FAC) regulations 17–243 (Tampering with Motor Vehicle Pollution Control Equipment) and 17–244 (Visible Emissions from Motor Vehicles) which became state effective on February 21, 1990.

(B) Revisions to FAC Chapter 17–243 (Tampering with Motor Vehicle Air Pollution Control Equipment) which became state effective May 29, 1990.

(ii) *Other material.*

(A) March 20, 1990, and June 18, 1990, letters from the Florida Department of Environmental Regulation.

[FR Doc. 92–13383 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[GA–020–5419; FRL–4133–7]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 3, 1991, the State of Georgia submitted a complete SIP revision incorporating the federal nitrogen dioxide (NO_2) increment program into the Georgia PSD regulations. They were submitted in response to the requirement that states either revise their SIP to include the federal nitrogen dioxide (NO_2) increments for PSD or request delegation from EPA. The revisions being approved today incorporate by reference the federal NO_2 increment requirements into the Georgia PSD regulations.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is

received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Liz Wilde of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted by the Georgia Department of Natural Resources may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street, Southeast, Room 1162, East Tower, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Liz Wilde of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 17, 1988 (53 FR 40656), EPA published a final rule for the Prevention of Significant Deterioration (PSD) for Nitrogen Oxides. States could either submit a revision to the SIP to incorporate the new nitrogen dioxide (NO_2) increments for PSD or request delegation of authority for the revised federal PSD Regulations. On December 5, 1990, the Georgia Department of Natural Resources adopted revisions to the Georgia PSD regulations which incorporated by reference the federal NO_2 increment regulations. The Georgia Department of Natural Resources submitted the Georgia PSD regulation revision to EPA on January 3, 1991, which became state effective on January 9, 1991. However it was not until April 3, 1991, that the State submitted all of the necessary information enabling EPA to determine the SIP submittal as being complete. Georgia requested that the revisions be adopted as part of the federally approved SIP.

On February 10, 1982 (47 FR 6017), EPA approved the Georgia PSD SIP. The State's PSD regulation (391–3–1–.02(7)) adopted by reference the appropriate sections of 40 CFR 52.21. It also submitted the phrase "Director of EPD" for the word "Administrator" in those adopted sections. For ease of adopting revisions to the Federal PSD regulation, the State normally deletes the regulation in its entirety and then readopts the same material, thus updating the federal version that is adopted by reference. The provisions that were readopted by the State of Georgia are listed as follows

391–3–1–.02(7) Prevention of Significant Deterioration of Air Quality

Delete paragraph (7) and replace with the following:

(7) *Prevention of Significant Deterioration of Air Quality.*

(a) General Requirements:

1. The provisions of this section (7) shall apply to any source and the owner or operator of any source subject to any requirement under 40 Code of Federal Regulations (hereinafter, CFR), § 52.21 as amended.

2. Definitions: For the purpose of this section, 40 CFR, § 52.21 (b) as amended, is hereby incorporated by reference.

(b) Prevention of Significant Standards:

1. Ambient air increments: 40 CFR, § 52.21(c), as amended, is hereby incorporated and adopted by reference.

2. Ambient air ceilings: 40 CFR, § 52.21(d), as amended, is hereby incorporated and adopted by reference.

3. Restrictions on area classifications: 40 CFR, § 52.21(e), as amended, is hereby incorporated and adopted by reference.

4. Stack heights: 40 CFR, § 52.21(h), as amended, is hereby incorporated and adopted by reference.

5. Review of major stationary sources and major modifications—source applicability and general exemptions: 40 CFR, § 52.21(i), as amended, is hereby incorporated and adopted by reference.

6. Control technology review: 40 CFR, § 52.21(j), as amended, is hereby incorporated and adopted by reference.

7. Source impact analysis: 40 CFR, § 52.21(k), as amended, is hereby incorporated and adopted by reference.

8. Air quality models: 40 CFR, § 52.21(l), as amended, is hereby incorporated and adopted by reference.

9. Air quality analysis: 40 CFR, § 52.21(m), as amended, is hereby incorporated and adopted by reference.

10. Source information: 40 CFR, § 52.21(n), as amended, is hereby incorporated and adopted by reference.

11. Additional impact analysis: 40 CFR, § 52.21(o), as amended, is hereby incorporated and adopted by reference.

12. Sources impacting federal class I areas—additional requirements: 40 CFR, § 52.21(p), as amended, is hereby incorporated and adopted by reference.

13. Public participation: 40 CFR, § 52.21(q), as amended, is hereby incorporated and adopted by reference.

14. Source obligation: 40 CFR, § 52.21(r), as amended, is hereby incorporated and adopted by reference.

15. Innovative control technology: 40 CFR, § 52.21(v), as amended, is hereby incorporated and adopted by reference.

16. Permit rescission: 40 CFR, § 52.21(w), as amended, is hereby incorporated and adopted by reference.

In addition to the SIP submittal, the State in a letter dated August 6, 1991, has committed to minimum program elements as required by EPA's guidance dated August 17, 1990. The NO_x increment guidance requires the following minimum program elements.

1. Analysis—Agencies must require NO_2 increment consumption analyses for all major new or modified sources, and nitrogen oxides (NO_x) emissions from minor sources must be considered in those analyses.

2. Increment Consumption—Agencies must determine NO_2 increment consumption for the transition period between February 8, 1988, and the date the State program goes into effect, and conduct a periodic assessment of NO_2 increment status.

The revisions being approved meet all of the requirements for incorporating the federal NO_2 increments in the Georgia SIP.

Final Action

EPA is today approving the revisions to the Georgia PSD air quality regulations listed above. All of the revisions being approved are consistent with Agency policy.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. If, however, notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 30, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(40) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(40) Revisions to include NO_2 increment requirements in the PSD regulations, Chapter 391–3–.02(7) of the Georgia Department of Natural Resources Administrative Code which was submitted on January 3, 1991.

(i) *Incorporation by reference.*

(A) Rule 391–3–1–.02(7) entitled "Prevention of Significant Deterioration of Air Quality" which became state effective on January 9, 1991.

(ii) *Other material.*

(A) Letters dated January 3, 191, and April 3, 1991, from the Georgia Department of Natural Resources.

(B) Letter dated August 6, 1991, from the Georgia Department of Natural Resources regarding minimum program elements.

[FR Doc. 92–13379 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OR10–1–5475, OR9–1–5477, OR8–1–5254; FRL–4135–2]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves the new Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR Chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). In addition, EPA approves revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning).

The above revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) were made to support Oregon's PM_{10} Nonattainment Area control strategy(ies) and in response to section 110(a)(2)(A) of the Clean Air Act Amendments of 1990. The provisions of OAR 340–34–001 to 34–115 will also reduce the level of PM_{10} emissions statewide.

EFFECTIVE DATE: This action will be effective on August 10, 1992, unless notice is received before July 9, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Environmental Protection Agency, Dockets # OR10–1–5475, OR9–1–5477, OR8–1–5254), 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Oregon Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–6510, FTS: 399–6510.

SUPPLEMENTARY INFORMATION:

I. Background

Oregon's Woodstove Certification Rules (OAR 340–21–100 to 21–190) were first approved by EPA on August 2, 1985, prior to promulgation of the Federal New Source Performance Standards for New Residential Wood Heaters (40 CFR 60 subpart AAA). Revisions to these rules were submitted to EPA by the Oregon State Department of Environmental Quality (ODEQ) on March 12, 1990, and on November 15, 1991. The November 15, 1991, submittal, therefore, supercedes the March 12, 1990 submittal. OAR 340–21–100 to 21–190 is revised in the following manner:

(1) The Division 21 rules were renumbered and incorporated into a newly formed Division 34 of OAR chapter 340.

(2) EPA's New Source Performance Standards for New Residential Wood Heaters (40 CFR 60 subpart AAA, 53 FR 5873, February 26, 1988) were adopted. The ODEQ retained its laboratory efficiency accreditation requirement and overall retail enforcement authority. This action satisfies ODEQ's statutory (ORS 468.630–468.655) requirements, promotes a uniform national emission standard, simplifies Oregon's certification process and reduces cost for regulated communities.

(3) An amendment was made to OAR 340–34–075 requiring Oregon's temporary label to show only overall efficiency.

(4) Provisions prohibiting the sale of used non-certified woodstoves were added (OAR 340–34–010(2) & (3)). This prohibition is applicable on a statewide basis.

A Woodburning Curtailment section was added (OAR 340–34–150 through 340–34–175). This section grants ODEQ the authority to implement a mandatory curtailment should an enforceable woodburning curtailment program be required as an emission reduction control strategy for a PM_{10} nonattainment area. This section would

be invoked should ODEQ determine that the local government or regional authority has failed to adopt or adequately implement the required woodburning curtailment program.

An additional section in Division 34, Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas (OAR 340–34–205 through 340–34–215), was submitted for inclusion in Oregon's Air Quality Control Program Plan Volume 2. Provisions in this section apply to any area classified as a nonattainment area for PM_{10} that does not achieve attainment by December 31, 1994. The removal and destruction of used, noncertified woodstoves upon sale of a home would be required in an area that did not attain the PM_{10} standards.

Revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning) were also submitted for approval. The purpose of these revisions are to improve consistency between local and state open burning requirements and provide an open burning contingency measure in the PM_{10} control strategies for the Medford-Ashland and Grants Pass PM_{10} nonattainment areas.

OAR 340–23–030 was revised to define "disease and pest control." OAR 340–23–043 was revised to: (1) increase the ventilation index to 400 (from the less stringent 200 index) throughout the Rogue Basin; (2) grant the burning of orchard prunings during February 1992 and February 1993 on days when the ventilation index is 200 and the Rogue Basin woodburning advisory is green; and (3) grant an exemption for disease and pest control burning when the ventilation index is 200 and the Rogue Basin woodburning advisory is green. OAR 340–23–090 was revised to include a provision which would prohibit all open burning within the Rogue Basin open burning control area during November, December, January, and February unless authorized pursuant to OAR 340–23–100. This provision would not be triggered unless EPA published a notice in the **Federal Register** that the Medford-Ashland Air Quality Maintenance Area or the Grants Pass Urban Growth Area failed to attain the national ambient air quality standards for PM_{10} by the December 31, 1994 deadlilne.

II. EPA Action

Today EPA is approving Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). In addition, EPA approves revisions to OAR 340–23–030, 043, & 090 (Rules for Open Burning).

III. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 8, 1992.

Dana A. Rasmussen,

Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(92) On November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (the Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 34—Residential Woodheating in OAR Chapter 340 which contains OAR 340–34–001 to 34–115 (Oregon Woodstove Certification—previously Division 21–100 to 21–190 of OAR Chapter 340); a new section OAR 340–34–150 to 34–175 (Woodburning Curtailment); and a new section OAR 340–34–200 to 34–215 (Woodstove Removal Contingency Program for PM_{10} Nonattainment Areas). Also OAR 340–23–030, 043, & 090 (Rules for Open Burning).

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 34 (Residential

Wood Heating), section—001 (Purpose); –005 (Definitions); –010 (Requirements for the Sale of Woodstoves); –015 (Exemptions); –020 (Civil Penalties); –050 (Emission Performance Standards & Certification); –055 (Efficiency Testing Criteria & Procedures); –060 (General Certification Procedures); –065 (Changes in Woodstove Design); –070 (Labelling Requirements); –075 (Removal Label); –080 (Label Approval); –085 (Laboratory Accreditation Requirements); –090 (Accreditation Criteria); –095 (Application for Laboratory Efficiency Accreditation); –100 (On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration); –105 (Accreditation Application Deficiency, Notification and Resolution); –110 (Final Department Administrative Review and Certificate of Accreditation); –115 (Revocation and Appeals); –150 (Applicability); –155 (Determination of Air Stagnation Conditions); –160 (Prohibition on Woodburning During Periods of Air Stagnation); –165 (Public Information Program); –170 (Enforcement); –175 (Suspension of Department Program); –200 (Applicability); –205 (Removal and Destruction of Uncertified Stove Upon Sale of Home); –210 (Home Seller's Responsibility to Verify Stove Destruction); –215 (Home Seller's Responsibility to Disclose) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

(C) Oregon Administrative Rules, Chapter 340, Division 23 (Rules for Open Burning), section –030 (Definitions); –043 (Open Burning Schedule); and –090 (Coos, Douglas, Jackson and Josephine Counties) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the date indicated) have been approved and are part of the current State implementation plan.

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1–86)
2. General Administration (1–86)
- 2.1 Agency Organization (1–86)
- 2.2 Legal Authority (1–86)
- 2.3 Resources (1–86)
- 2.4 Intergovernmental Cooperation and Consultation (1–86)
- 2.5 Miscellaneous Provisions (1–86)

3. Statewide Regulatory Provisions
- 3.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

- Sec. 030 Definitions (11–8–84)
- Sec. 035 Consolidation of Proceedings (9–25–74)
- Sec. 040 Notice of Violation (12–3–85)
- Sec. 045 Mitigating and Aggravating Factors (11–8–86)
- Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
- Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11–8–84)
- Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

- Sec. 005 Purpose (4–15–72)
- Sec. 007 Exceptions (6–10–88)
- Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
- Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
- Sec. 020 Application for a Permit (4–15–72), except (1), (4)(b), (5) (6–10–88)
- Sec. 025 Issuance of a Permit (4–15–72), except (2), (3), (4), (5), (6) (6–10–88)
- Sec. 030 Renewal of a Permit (4–15–72)
- Sec. 035 Denial of a Permit (4–15–72)
- Sec. 040 Modification of a Permit (4–15–72)
- Sec. 045 Suspension or Revocation of a Permit (4–15–72)
- Sec. 050 Special Permits (4–15–72)

Division 20—General

- Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
- Sec. 003 Exceptions (3–1–72)

Registration

- Sec. 005 Registration in General (9–1–70)
- Sec. 010 Registration Requirements (9–1–70)
- Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

- Sec. 020 Requirement (9–1–70)
- Sec. 025 Scope (3–1–72)
- Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
- Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

- Sec. 035 Program (9–1–70)
- Sec. 037 Stack Heights & Dispersion Techniques (4–25–86)
- Sec. 040 Methods (9–11–70)
- Sec. 045 Department Testing (9–1–70)
- Sec. 046 Records; Maintaining and Reporting (10–1–72)
- Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

- Sec. 140 Purpose (1–6–86)
- Sec. 145 Definitions (1–6–76)
- Sec. 150 Notice Policy (6–10–88)
- Sec. 155 Permit Required (5–31–83)
- Sec. 160 Multiple-Source Permit (1–6–76)
- Sec. 165 Fees (3–14–86)
- Sec. 170 Procedures For Obtaining Permits (1–11–74)
- Sec. 175 Other Requirements (6–29–79)
- Sec. 180 Registration Exemption (6–29–79)
- Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

- Sec. 200 Purpose (10–13–78)
- Sec. 205 Definitions (10–13–78)
- Sec. 210 Public Interest Representation (10–13–78)
- Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

- Sec. 220 Applicability (9–8–81)
- Sec. 225 Definitions (10–16–84)
- Sec. 230 Procedural Requirements (10–16–84), except (3)(D) (6–10–88)
- Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
- Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
- Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
- Sec. 250 Exemptions (9–8–81)
- Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
- Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
- Sec. 265 Emission Reduction Credit Banking (4–18–83)
- Sec. 270 Fugitive and Secondary Emissions (9–8–81)
- Sec. 275 Repealed
- Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

- Sec. 300 Policy (9–8–81)
- Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
- Sec. 305 Definitions (9–8–81)
- Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
- Sec. 315 Alternative Emission Controls (9–8–81)
- Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

- Sec. 340 Definitions (4–18–83)
- Sec. 345 Limitations (4–18–83)

Division 22—General Gaseous Emissions

Sulfur Content of Fuels

- Sec. 005 Definitions (3–1–72)
- Sec. 010 Residual Fuel Oils (8–25–77)
- Sec. 015 Distillate Fuel Oils (3–1–72)
- Sec. 020 Coal (1–29–82)
- Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

- Sec. 050 Definitions (3–1–72)
- Sec. 055 Fuel Burning Equipment (3–1–72)
- Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6–15–89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9-8-81)
Sec. 025 Policy (9-8-81)
Sec. 030 Definitions (6-16-84) (15) "Disease and Pest Control" (11/13/91)
Sec. 035 Exemptions, Statewide (6-16-84)
Sec. 040 General Requirements Statewide (9-8-81)
Sec. 042 General Prohibitions Statewide (6-16-84)
Sec. 043 Open Burning Schedule (11/13/91)
Sec. 045 County Listing of Specific Open Burning Rules (9-8-81)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11/13/91)

Open Burning Prohibitions

Sec. 55 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9-8-81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6-16-84)
Sec. 065 Clackamas County (6-16-84)
Sec. 070 Multnomah County (6-16-84)
Sec. 075 Washington County (6-16-84)
Sec. 080 Columbia County (9-8-81)
Sec. 085 Lane County (6-16-84)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9-8-81)
Sec. 100 Letter Permits (6-16-84)
Sec. 105 Forced Air Pit Incinerators (9-8-81)
Sec. 110 Records and Reports (9-8-81)
Sec. 115 Open Burning Control Areas (6-16-84)

Division 24–Visible Emissions

Motor Vehicle Emission Control Inspection Test Criteria, Methods, and Standards

Sec. 300 Scope (4-1-85)
Sec. 301 Boundary Designations (9-9-88)
Sec. 305 Definitions (4-1-85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12-31-83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8-1-81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9-9-88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12-31-83)
Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9-9-88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9-9-88)
Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8-1-81) Subpart (3) (9-12-86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9-12-86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12-31-83)
Sec. 350 Gas Analytical System Licensing Criteria (9-9-88)

Division 25—Specific Industrial Standards Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3-1-72)
Sec. 010 Statement of Policy (3-1-72)
Sec. 015 Authorization to Operate a Wigwam Burner (3-1-72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3-1-72)

Hot Mix Asphalt Plants

Sec. 105 Definitions (3-1-73)
Sec. 110 Control Facilities Required (3-1-73)
Sec. 115 Other Established Air Quality Limitations (3-1-73)
Sec. 120 Portable Hot Mix Asphalt Plants (4-18-83)
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3-1-73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6-18-82)
Sec. 260 Definitions (6-18-82)
Sec. 265 Emission Standards (6-18-82)
Sec. 270 Special Problem Areas (12-25-73)
Sec. 275 Highest and Best Practical Treatment and Control Requirement (12-25-73)
Sec. 280 Monitoring (6-18-82)
Sec. 285 Reporting (6-18-82)

Regulations for Sulfite Pulp Mills

Sec. 350 Definitions (5-23-80)
Sec. 355 Statement of Purpose (5-23-80)
Sec. 360 Minimum Emission Standards (5-23-80)
Sec. 365 Repealed
Sec. 370 Monitoring and Reporting (5-23-80)
Sec. 375 Repealed
Sec. 380 Exceptions (5-23-80)

Laterite Ore Production of Ferronickel

Sec. 405 Statement of Purpose (3-1-72)
Sec. 410 Definitions (3-1-72)
Sec. 415 Emission Standards (3-1-72)
Sec. 420 Highest and Best Practicable Treatment and Control Required (3-1-72)
Sec. 425 Compliance Schedule (3-1-72)
Sec. 430 Monitoring and Reporting (3-1-72)

Division 26—Rules for Open Field Burning (Willamette Valley)

Sec. 001 Introduction (7-3-84)
Sec. 003 Policy (3-7-84)
Sec. 005 Definitions (3-7-84)
Sec. 010 General Requirement (3-7-84)
Sec. 011 Repealed
Sec. 012 Registration, Permits, fees, Records (3-7-84)
Sec. 013 Acreage Limitations, Allocations (3-7-84)
Sec. 015 Daily Burning Authorization Criteria (3-7-84)
Sec. 020 Repealed
Sec. 025 Civil Penalties (3-7-84)
Sec. 030 Repealed
Sec. 031 Burning by Public Agencies (Training Fires) (3-7-84)
Sec. 035 Experimental Burning (3-7-84)
Sec. 040 Emergency Burning, Cessation (3-7-84)
Sec. 045 Approved Alternative Methods of Burning Propane Flaming) (3-7-84)

Division 27—Air Pollution Emergencies

Sec. 005 Introduction (10-24-83)
Sec. 010 Episode State Criteria for Air Pollution Emergencies (10-24-83)
Sec. 012 Special Conditions (10-24-83)
Sec. 015 Source Emission Reduction Plans (10-24-83)
Sec. 020 Repealed
Sec. 025 Regional Air Pollution Authorities (10-24-83)

Division 30—Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area

Sec. 005 Purpose and Application (4-7-78)
Sec. 010 Definitions (5-6-81)
Sec. 015 Wood Waste Boilers (10-29-80, 6-13-86)
Sec. 020 Veneer Dryer Emission Limitations (1-28-80)
Sec. 025 Air Conveying Systems (4-7-78)
Sec. 030 Wood Particle Dryers at Particleboard Plants (5-6-81)
Sec. 031 Hardwood Manufacturing Plants (5-6-81)
Sec. 035 Wigwam Waste Burners (10-29-80)
Sec. 040 Charcoal Producing Plants (4-7-78)
Sec. 043 Control of Fugitive Emissions (4-18-83)
Sec. 044 Requirement for Operation and Maintenance Plans (4-18-83)
Sec. 045 Compliance Schedules (4-18-83)
Sec. 050 Continuous Monitoring (4-7-83)
Sec. 055 Source Testing (4-7-78)
Sec. 060 Repealed
Sec. 065 New Sources (4-7-78)
Sec. 070 Open Burning (4-7-78)

Division 31—Ambient Air Quality Standards

Sec. 005 Definitions (3-1-72)
Sec. 010 Purpose and Scope of Ambient Air Quality Standards (3-1-72)
Sec. 015 Suspended Particulate Matter (3-1-72)
Sec. 020 Sulfur Dioxide (3-12-72)
Sec. 025 Carbon Monoxide (3-1-72)
Sec. 030 Ozone (1-29-82)
Sec. 035 Hydrocarbons (3-1-72)
Sec. 040 Nitrogen Dioxide (3-1-72)
Sec. 045 Repealed
Sec. 050 Repealed
Sec. 055 Ambient Air Quality Standard for Lead (1-21-83)

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Sec. 100 General (6-22-79)
Sec. 110 Ambient Air Increments (6-22-79)
Sec. 115 Ambient Air Ceilings (6-22-79)
Sec. 120 Restrictions on Area Classifications (6-22-79)
Sec. 125 Repealed
Sec. 130 Redesignation (6-22-79)

Division 34—Residential Wood Heating

Sec. 001 Purpose (11/13/91)
Sec. 005 Definitions (11/13/91)
Sec. 010 Requirements for Sale of Woodstoves (11/13/91)
Sec. 015 Exemptions (11/13/91)
Sec. 020 Civil Penalties (11/13/91)

Sec. 050 Emission Performance Standards & Certification (11/13/91)
Sec. 055 Efficiency Testing Criteria & Procedures (11/13/91)
Sec. 060 General Certification Procedures (11/13/91)
Sec. 065 Changes in Woodstove Design (11/13/91)
Sec. 070 Labelling Requirements (11/13/91)
Sec. 075 Removable Label (11/13/91)
Sec. 080 Label Approval (11/13/91)
Sec. 085 Laboratory Accreditation Requirements (11/13/91)
Sec. 090 Accreditation Criteria (11/13/91)
Sec. 095 Application for Laboratory Efficiency Accreditation (11/13/91)
Sec. 100 On-Site Laboratory Inspection and Stove Testing Proficiency Demonstration (11/13/91)
Sec. 105 Accreditation Application Deficiency, Notification and Resolution (11/13/91)
Sec. 110 Final Department Administrative Review and Certification of Accreditation (11/13/91)
Sec. 115 Revocation and Appeals (11/13/91)
Sec. 150 Applicability (11/13/91)
Sec. 155 Determination of Air Stagnation Conditions (11/13/91)
Sec. 160 Prohibition on Woodburning During Periods of Air Stagnation (11/13/91)
Sec. 165 Public Information Program (11/13/91)
Sec. 170 Enforcement (11/13/91)
Sec. 175 Suspension of Department Program (11/13/91)
Sec. 200 Applicability (11/13/91)
Sec. 210 Removal and Destruction of Uncertified Stove Upon Sale of Home (11/13/91)
Sec. 215 Home Seller's Responsibility to Disclose (11/13/91)

3.2 Lane Regional Air Pollution Authority Regulations

Title 11 Policy and General Provisions

11-005 Policy (8-2-72)
11-010 Construction and Validity (8-2-72)
11-015 Definitions (6-29-79)
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Title 12 General Duties and Powers of Board and Director

12-005 Duties and Powers of Board of Directors (6-29-79)
12-010 Duties and Function of the Program Director (6-29-79)
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12-020 Advisory Committee (8-2-72)
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Title 13 Enforcement Procedures (6-29-79)

Title 20 Indirect Sources

20-100 Policy and Jurisdiction (11-18-75)
20-110 Definitions (6-29-79)
20-115 Indirect Sources Required to Have Indirect Source Construction Permits (6-29-79)
20-120 Establishment of an Approved Regional Parking and Circulation Plan(s) by a City, County or Regional Planning Agency (6-29-79)
20-125 Information and Requirements Applicable to Indirect Source(s) Construction Permit Applications Where An Approved Regional Parking and Circulation Plan is on File (6-29-79)
20-129 Information and Requirements Applicable to Indirect Source(s) Construction Permit Application Where No Approved Regional Parking and Circulation Plan is On File (6-29-79)
20-130 Issuance or Denial of Indirect Source Construction Permits (6-29-79)
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Title 21 Registration, Reports & Test Procedures

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21-010 Authority to Construct (6-29-79)
21-015 Submission of Plans & Specifications (8-2-72)
21-020 Notice of Approval (8-2-72)
21-025 Deviation from Approved Plans or Specifications (8-2-72)
21-030 Order Prohibiting Construction—Order Posting (6-29-79)
21-035 Notice of Completion (8-2-72)
21-040 Compliance Schedule(8-2-72)
21-045 Source Emission Tests (8-2-72)
21-050 Upset Conditions (8-2-72)
21-055 Records (8-2-72)
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Title 22 Permits, except for Definition Number 7 "Dispersion Techniques" and Definition Number 11 "Good Engineering Practice Stack Height" (4-13-82)

Title 31 Ambient Air Standards

31-005 General (8-2-72)
31-015 Suspended Particulate Matter (8-2-72)
31-025 Sulfur Dioxide (8-2-72)
31-030 Carbon Monoxide (8-2-72)
31-035 Ozone (7-12-83)
31-040 Hydrocarbons (8-2-72)
31-045 Nitrogen Dioxide (8-2-72)

Title 32 Emission Standards

32-005 General (6-29-79)
32-010 Restriction in Emission of Visible Air Contaminant (6-29-79)
32-025 Exceptions—Visible Air Contaminant Standards (8-2-72)
32-030 Particulate Matter Weight Standards (8-2-72)
32-035 Particulate Matter Weight Standards—Existing Sources (8-2-72)
32-040 Particulate Matter Weight Standards—News Sources (8-2-72)
32-045 Process Weight Emission Limitions (8-2-72)
32-055 Particulate Matter Size Standard (8-2-72)
32-060 Airborne Particulate Matter (8-2-72)
32-065 Sulfur Dioxide Emission Limitations (8-2-72)
32-100 Plant Site Emission Limits Policy (9-14-82)
32-101 Requirement for Plant Site Emission Limits (9-14-82)
32-102 Criteria for Establishing Plant Site Emission Limits (9-14-82)
32-103 Alternative Emission Controls (Bubble) (9-14-82)
32-104 Temporary PSD Increment Allocation (9-14-82)
32-800 Air Conveying Systems (1-8-85)
32-990 Other Emissions (8-2-72)

Title 33 Prohibited Practices and Control of Special Classes

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33-025 Wigwam Waste Burners (8-2-72)
33-030 Concealment and Masking of Emissions (8-2-72)
33-045 Gasoline Tanks (8-2-72)
33-055 Sulfur Content of Fuels (8-2-72)
33-060 Board Products Industries (8-2-72)
33-065 Charcoal Producing Plants (5-15-79)
33-070 Kraft Pulp Mills (9-14-82)

Title 36 Rules for Open Outdoor Burning (1-30-80)

Title 42 Rules of Practice and Procedure—Hearing Procedure (6-29-79)

Title 44 Rules of Practice and Procedure (6-29-79)

Title 45 Rules of Practice and Procedure—Decision and Appeal (6-29-79)

Title 51 Air Pollution Emergencies

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51-010 Episode Criteria (8-2-72)
51-015 Emission Reduction Plans (8-2-72)
51-020 Preplanned Abatement Strategies (8-2-72)
51-025 Implementation (8-2-72)
51-026 Effective Date (8-2-72)

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4.2 Portland-Vancouver AQMA-Carbon Monoxide (7-16-82)
4.3 Portland-Vancouver AQMA-Ozone (7-16-82)
4.4 Salem Nonattainment Area-Carbon Monoxide (7-79)
4.5 Salem Nonattainment Area-Ozone (9-19-80)
4.6 Eugene-Springfield AQMA-Total Suspended Particulate (1-30-81)
4.7 Eugene-Springfield AQMA-Carbon Monoxide (6-20-79)
4.8 Medford-Ashland AQMA-Ozone (1-85)
4.9 Medford-Ashland AQMA-Carbon Monoxide (8-82)
4.10 Medford-Ashland AQMA-Particulate Matter (4-83)
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5. Control Strategies for Attainment and Nonattainment Areas (1-86)

5.1 Statewide Control Strategies for Lead (1-83)
5.2 Visibility Protection Plan (10-24-86)
5.3 Prevention of Significant Deterioration (1-86)

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6.2 Data Handling and Analysis Procedures (1-86)
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7. Emergency Action Plan (1–86)

8. Public Involvement (1–86)

9. Plan Revision and Reporting (1–86)

OAR Chapter 629–43–043 Smoke Management Plan Administrative Rule (12–12–86) Directive 1–4–1–601 Operational Guidance for the Oregon Smoke Management Program (12–86)

[FR Doc. 92–13384 Filed 6–3–92; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[FL–040–5421; FRL–4131–7]

Approval and Promulgation of Implementation Plans, Florida; Vehicle Anti-tampering

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Florida State Implementation Plan (SIP). These revisions, amending the tampering with motor vehicle air pollution control equipment guidelines, were submitted to EPA by the Florida Department of Environmental Regulation (FDER) on January 24, 1991. This plan has been voluntarily submitted by the FDER as an integral part of the program to achieve and maintain the National Ambient Air Quality Standard (NAAQS) for ozone. These regulations do not represent a relaxation of federal regulations or EPA standards and EPA is therefore approving the SIP revisions.

EFFECTIVE DATE: This action will be effective August 10, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Eric Maurer of EPA, Region IV (see EPA Region IV address below).

Copies of the materials submitted by Florida may be examined at the following locations during normal business hours:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Eric Maurer of the Region IV Air Programs Branch, at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Following a study of Florida's air quality problems by the Motor Vehicle Emissions Study Commission, established by the 1987 Florida Legislature, the 1988 Legislature passed the Clean Outdoor Air Law (COAL) which charged the Florida Department of Environmental Regulation (FDER) with developing motor vehicle test procedures, regulations, and emission standards. The FDER initiated a two-phase plan to address these issues, the first phase concerning the implementation of a motor vehicle inspection and maintenance (I/M) program, and the second phase addressing the tampering and visible emission problem.

Florida was not required to have a motor vehicle inspection and maintenance program prior to the 1990 Clean Air Act Amendments, and the state was therefore not subject to the Savings Clause in section 182(a)(2)(B) of the amended Clean Air Act. However, Florida began implementation of a voluntary, state-initiated I/M program in April 1991, and EPA approved the program on March 3, 1992 (57 FR 7550).

Although Florida has benefitted from some reduction of motor vehicle emissions achieved through the Federal Motor Vehicle Emissions Control Program, which requires new cars to be equipped with air pollutant emission control devices, and the state I/M program which began in April 1991 in carbon monoxide and ozone nonattainment counties, the effectiveness of these programs have been significantly reduced by the sale of tampered vehicles through the used car market. The State of Florida has been found, through EPA and FDER field inspections, to have some of the highest emission control system tampering rates in the country.

On March 20, 1990, pursuant to section 316.2935 of the Florida Statutes, FDER submitted to EPA for approval chapter 17–243 (Tampering with Motor Vehicle Air Pollution Control Equipment), to be included in the Florida SIP for ozone. This anti-tampering program was voluntarily implemented by Florida in response to state legislative requirements and affected not only I/M counties but all counties statewide. The anti-tampering regulation represented a state-initiated effort to prevent high-emitting, tampering vehicles from being "dumped" into non-I/M counties.

On June 18, 1990, FDER submitted to EPA for approval changes to chapter 17–243 which provided that it is unlawful for any person or motor vehicle dealer to knowingly offer or display for sale or lease, sell, lease or transfer title to a motor vehicle that has been tampered with. All 1975 and newer vehicles with a net unloaded weight under 5,000 pounds or a gross loaded weight less than 10,000 pounds are subject to this rule. Any person found violating this rule will be charged with a non-criminal traffic violation. The March 20, 1990, and June 18, 1990, anti-tampering program submittals were approved by EPA in a separate **Federal Register** notice.

The current amendment to chapter 17-243, F.A.C. (made in response to HB 951 which was passed by the Florida Legislature) changes the "tampering inspection" (required for licensed motor vehicle dealers) definition from the previous eleven-point inspection to a "six-point check" of the catalytic converter, fuel inlet restrictor, unvented fuel cap, exhaust gas recirculation system (EGR), air pump and/or air injection system (AIS), and fuel evaporative emissions system. This "check" is an inspection to confirm that the aforementioned six air pollution control devices and systems, when applicable, are in place and appear properly connected and undamaged as determined by visual observation. Exemptions to the tampering inspection now include first-time retail sales or leases of new motor vehicles subject to certification under section 207, Clean Air Act, 42 U.S.C. 7541, as well as sales, reassignments, and trade by licensed motor vehicle dealers to licensed motor vehicle dealers.

Certification requirements at the time of title transfer are also set forth in the revision. On and after January 1, 1991, the seller/lessor is required to visually observe and certify in writing to the buyer/lesseor that the vehicle has been inspected and found not to be tampered with in violation of the statute. Licensed motor vehicle dealers must use the newly enacted six-point component check on any vehicle designated as model year 1981 or newer; persons other than motor vehicle dealers must continue to use the unamended three-point check for vehicles designated as model year 1975 through 1980, and may use either the three-point or six-point check for 1981 and later model year vehicles. Sales and trade-ins of tampered vehicles to licensed motor vehicles dealers are allowed, providing an incentive for owners of tampered vehicles to dispose of them through licensed dealers and the opportunity for dealers to repair tampered vehicles before being resold.

Final Action

EPA is today approving revisions to the Florida SIP amending the voluntary state-initiated tampering with motor vehicle air pollution control equipment program. All of the revisions being approved are consistent with Agency policy. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrtor under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, econimic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate curcuit by August 10, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1 1982.

Dated: April 13, 1992.

Patrick M. Tobin,

Acting, Regional Administrator.

Part 52—chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52 [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(74) to read as follows

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(74) Vehicle Anti-tampering revisions (Chapter 17–243 of the Florida Administrative Code) which were submitted to EPA on January 24, 1991.

(i) *Incorporation by reference.*

(A) Revisions to FAC Chapter 17–243 (Tampering with Motor Vehicle Air Pollution Control Equipment) which became state effective January 2, 1991, as follows:

17–243.200—Definitions: (1); (2) Introductory Paragraph and (a); and (3) Introductory paragraph
17–243.300—Exemptions: (2); (3) Introductory paragraph and (b); (4) Introductory paragraph, (b), (c) and (d)
17–243.400—Prohibitions
17–243.500—Certification: (1)(a) thru (d)
17–243.600—Enforcement: (2); (3) Introductory paragraph and (b), (4); (6); and (7)

(ii) *Other material.*

(A) Letter dated January 24, 1991, from the Florida Department of Environmental Regulation.

[FR Doc. 92–13378 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91–115 FCC No. 92–168]

Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 8, 1992, the Commission released a Report and Order and Request for Supplemental Comment (Report and Order). In the Report and Order the Commission reviews certain local exchange carrier (LEC) calling practices and services and concludes that they are subject to the requirements of title II of the Communications Act. This action adopts a rule requiring that all LECs provide non-discriminatory access to LEC joint use card validation data and to LEC line number screening data and that any LEC entering into a card honoring agreement with one interexchange carrier (IXC) must stand ready to enter such an agreement with all requesting IXCs. This action also amends part 69 of the Commission's Rule to establish a new switched access element for validation database query service.

EFFECTIVE DATE: July 9, 1992.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: The Common Carrier Bureau in 1989 initiated a tariff investigation to examine certain practices of Cincinnati Bell Telephone Company (CBT) relating to the issuance and validation of telephone calling cards. Parties to that investigation maintained that many of the issues examined were not limited to CBT. On May 24, 1991, the Commission issued a Notice of Proposed Rulemaking, 56 FR 26644, June 10, 1991, 6 FCC Rcd 3506 (1991), seeking information on LEC card practices and proposing requirements for LECs which provide to IXCs access to certain validation and billing information and services for LEC joint use calling cards and LEC line screening data.

Accordingly, *it is ordered,* That the policies, rules and requirements set forth herein are adopted.

It is further ordered, That the provisions in this Report and Order and Request for Supplemental Comment will be effective 30 days after **Federal Register** publication.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.4 is amended by adding paragraph (b)(8) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) * * *

(8) Line information data base.

* * * * *

3. Section 69.120 is added to read as follows:

§ 69.120 Line information database.

(a) A charge that is expressed in dollars and cents per query shall be assessed upon all carriers that access validation information from a local exchange carrier database to recover the costs of:

(1) The transmission facilities between the local exchange carrier's signalling transfer point and the database; and

(2) The signalling transfer point facilities dedicated to the termination of the transmission facilities connecting the database to the exchange carrier's signalling network.

(b) A charge that is expressed in dollars and cents per query shall be assessed upon all carriers that access validation information from a local exchange carrier line information database to recover the costs of the database.

4. Section 69.305 is amended by redesignating paragraph (c) as paragraph (d) and revising it, and adding a new paragraph (c) to read as follows:

§ 69.305 Carrier cable and wire facilities (C&WF).

* * * * *

(c) Carrier C&WF that is used to provide transmission between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database sub-element at § 69.120(a).

(d) All Carrier C&WF that is not apportioned pursuant to paragraphs (a), (b), and (c) of this section shall be assigned to the Special Access element.

5. Section 69.306 is amended by revising paragraph (c) to read as follows:

§ 69.306 Central office equipment (COE).

* * * * *

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the Common Transport Element. COE Category 2 which is used to provide transmission facilities between the local exchange carrier's signalling transfer point and the database shall be assigned to the Line Information Database sub-element at § 69.120(a). All other COE Category 2 shall be assigned to the interexchange category.

* * * * *

6. Section 69.307 is amended by designating the existing paragraph as paragraph (b) and revising it, and adding a new paragraph (a) to read as follows:

§ 69.307 General support facilities.

(a) General purpose computer investment used in the provision of the Line Information Database sub-element at § 69.120(b) shall be assigned to that sub-element.

(b) All other General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

[FR Doc. 92-13463 Filed 6-8-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1001

[Ex Parte No. MC-204]

Historical Retention of International Joint Ocean-Motor Through-Rate Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies its regulations to reflect the elimination of its historical retention of international joint ocean-motor through-rate tariffs which are also filed with the Federal Maritime Commission (FMC). FMC, which retains copies of these tariffs in paper or microfiche form, will make them available for public inspection and copying. This change will help to alleviate the Commission's shortage of storage space and personnel, and eliminate the accompanying costs. The Commission will obtain any necessary approval for changes in its schedule of records retention from the National Archives and Records Service pursuant to the Federal Records Act.

EFFECTIVE DATE: This rule is effective July 9, 1992.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927-5597 or Charles E. Langyher, III (202) 927-5160 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPR) served March 12, 1992 (57 FR 8858, March 13, 1992), the Commission proposed to eliminate its historical retention of international joint ocean-motor through-rate tariffs which are also filed with the Federal Maritime Commission (FMC). The Commission currently receives approximately 75,000 FMC-ICC tariff publications per year and retains them for 10 years after cancellation.

Requests from the public to review these tariffs at the Commission have been very rare. Due to the minimal need for the information at the Commission, its availability at the FMC and the Commission's severe shortage of space and personnel, we proposed to dispose of the tariffs after their effective date.

The Commission indicated that it would continue to undertake appropriate review of the tariffs at the time they are filed, and that it would continue to make them available for initial public review. However, after the tariffs become effective, the Commission's copies would be destroyed. Any party requesting historical information on a tariff or tariffs would be referred to the FMC. The practice of referring the public to the FMC has been in effect informally for some time without any apparent problems, and FMC has indicated its willingness to see this system formalized.

We received no comments in response to the notice of proposed rulemaking, which is a further indication of the lack of any public need for continued retention of FMC-ICC tariffs at the Commission. We have therefore decided

to finalize the rules, as set forth in this rule.

Energy and Environmental Considerations

This action will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1001

Confidential business information, Freedom of Information.

Decided: June 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, the Commission amends title 49, chapter X, part 1001 as follows:

PART 1001—INSPECTION OF RECORDS

1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552 and 49 U.S.C. 10301 and 10321.

2. In § 1001.1, paragraph (a) is revised to read as follows:

§ 1001.1 Records available at the Commission's Washington office.

* * * * *

(a) Copies of tariffs (*except those specified in § 1001.3*), rate schedules, quotations or tenders under 49 U.S.C. 10721(b)(2); classifications, powers of attorney, concurrences, and contracts filed with the Commission pursuant to 49 U.S.C. 10762, 10764, 10765, 10766, 10721.

* * * * *

3. Sections 1001.3, 1001.4 and 1001.5 are redesignated as §§ 1001.4, 1001.5, and 1001.6 respectively and a new § 1001.3 is added to read as follows:

§ 1001.3 Records available at the Federal Maritime Commission.

Copies of international joint ocean-motor through-rate tariffs filed with the Commission will not be retained past the expiration of the notice period. These tariffs are also filed with the Federal Maritime Commission (FMC) and are available to the public at the FMC's Washington, DC office for inspection, in either paper or microfiche form, during its regular business hours.

[FR Doc. 92-13477 Filed 6-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911172-2021]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Pacific halibut and red king crab bycatch rate standards and request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1992 for the purposes of the vessel incentive program that has been implemented to reduce prohibited species bycatch rates in the groundfish trawl fisheries. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in specified groundfish fisheries included in the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 am, Alaska local time (A.l.t.), July 1, 1992, through 12 midnight A.l.t, December 31, 1992. Comments on this action are invited through June 30, 1992.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9100 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fishery Management Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Island Area and the FMP for Groundfish of the Gulf of Alaska. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in specified groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA Pacific cod trawl fisheries, the BSAI flatfish fishery, and the GOA "bottom rockfish" trawl fishery. Vessel operators must also comply with red king crab bycatch standards specified for the BSAI flatfish fishery in Zone 1, as defined in § 675.2. Definitions of the fisheries included under the incentive program are set forth in regulations at § 672.26(b) and § 675.26(b).

Regulations implementing the incentive program require the Regional Director to publish a notice in the **Federal Register** specifying halibut and red crab bycatch rate standards for each fishery monitored under the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Any vessel whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program.

Halibut and red king crab bycatch rate standards for the first half of 1992 were published in the **Federal Register** on January 24, 1992 (57 FR 2854). At its April 22-26, 1992, meeting, the Council recommended bycatch rate standards for the second half of 1992. These standards are set forth in Table 1. The Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information, as required by § 672.26(c) and § 675.26(c):

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 672.20(f) and § 675.21;

(D) Anticipated groundfish harvests; and

(E) Anticipated seasonal distribution of fishing effort for groundfish.

The Council's halibut bycatch rate standards for the BSAI Pacific cod and

flatfish trawl fisheries are largely based on anticipated seasonal fishing effort for these species and historic halibut bycatch rates observed in the Pacific cod and flatfish fisheries. The Council recommended that the halibut bycatch rate standards for the BSAI Pacific cod and flatfish trawl fisheries during the second half of 1992 be set at levels that approximate the average rates observed on trawl vessels participating in these fisheries during the past several years. For the third and fourth quarters of 1992, the recommended bycatch rate standards are 30 kilograms (kg) of halibut per metric ton (mt) of groundfish (3.0 percent) in the Pacific cod trawl fishery and 5 kg of halibut per mt of groundfish (0.5 percent) in the flatfish fishery.

Observer data for the BSAI Pacific cod trawl fishery during the last halves of 1990 and 1991 are not available because the fishery was closed during this period due to halibut bycatch restrictions. Therefore, the Council recommended that the bycatch rate standard for the BSAI Pacific cod trawl fishery during the last half of 1992 be set at a level that approximates the average rate observed on trawl vessels participating in this fishery during the first halves of 1990–1992 fishing years. The average quarterly rate during these years ranged from 1.35 percent to 2.22 percent. The 3.0 percent bycatch rate standard recommended by the Council for the second half of 1992 is an increase from the average rates observed during the first halves of the 1990–1992 fishing years because halibut bycatch rates normally increase during summer months after halibut migrate to shallower waters and become more vulnerable to shallow water trawl operations, such as the Pacific cod fishery.

When the Council recommended a bycatch rate standard for the BSAI Pacific cod trawl fishery, most of the annual 1992 halibut bycatch allowance specified for this fishery under a March 30, 1992, emergency rule (57 FR 11433, April 3, 1992) had been taken. Subsequent halibut bycatches in the Pacific cod trawl fishery resulted in a closure of this fishery for the remainder of the year (57 FR 23347, June 3, 1992). Nevertheless, NMFS is publishing a bycatch rate standard for the BSAI Pacific cod trawl fishery consistent with regulations at § 675.26(c).

The halibut bycatch rate standard recommended for the BSAI flatfish fishery approximates the average 1991 halibut bycatch rate observed in the yellowfin sole fishery, which is the predominate flatfish fishery after the season opens on May 1 (§ 675.23(c)).

Mid-summer bycatch rates in the flatfish fishery may increase as fishermen target on other flatfish species (e.g., flathead sole) that are normally associated with higher halibut bycatch rates, or as new vessels enter the flatfish fishery after the closure of the Bering Sea pollock fishery. A proposed rule has been submitted for Secretarial review that would address differences in halibut bycatch rates between the yellowfin sole and the rock sole/"other flatfish" fisheries by amending regulations to specify separate bycatch rate standards for these fisheries (57 FR 22695, May 29, 1992). If approved by the Secretary, the final rule would be effective by late summer, 1992, and alternative bycatch rate standards would be published in the **Federal Register** for public review and comment prior to the effective date of the final rule.

If vessels participating in the BSAI flatfish fisheries maintained halibut bycatch rates at the 0.5 percent bycatch rate standard recommended by the Council during the second half of 1992, the Council recognized that portions of the 1992 total allowable catch (TAC) amounts specified for yellowfin sole, rock sole, and "other flatfish" may not be harvested by trawl vessels under the halibut prohibited species catch (PSC) restrictions set forth for these fisheries at § 675.21. The Council further recognized that its recommended halibut bycatch rates standards for the BSAI Pacific cod trawl fishery will not allow for the trawl harvest of the 1992 TAC specified for Pacific cod under halibut PSC limit restrictions at § 675.21. The Council determined that its recommended bycatch rate standards would reduce halibut bycatch rates during the second half of 1992, consistent with the Council's intent for the incentive program, and that other gear types could continue to harvest the Pacific cod TAC under existing halibut PSC regulations.

The Council's recommended red king crab bycatch rate standard for the flatfish fishery in Zone 1 of the Bering Sea subarea is 2.5 crab per mt of groundfish during the third and fourth quarters of 1992. This standard is consistent with the red king crab halibut bycatch rate standards specified for the first half of 1992, but is an increase over the 1991 bycatch rate standard of 1.5 red king crab per mt of groundfish.

Little fishing effort for flatfish occurred in Zone 1 during 1991 because commercial concentrations of yellowfin sole normally occur north of this area by the time the fishery opens May 1. Consequestly, limited observer data exist for the 1991 fishery in Zone 1. These data indicate average red king crab bycatch rates between 1 and 1.5 crab per mt of groundfish. During late summer 1991, some flatfish fishermen experienced relatively high bycatch rates of halibut north of Zone 1 and expressed a desire to explore fishing grounds in Zone 1 that may have lower halibut bycatch rates. Fishermen were reluctant to fish in Zone 1 because they were concerned about possibly exceeding the red king crab bycatch rate standard. The total 1991 bycatch of red king crab by vessels participating in the rock sole, yellowfin sole, and "other flatfish" fisheries was less than 75,000 crab, or about 40 percent of the combined red king crab bycatch allowances specified for these fisheries (190,000 crab). In recognition that the red king crab bycatch allowance specified for the yellowfin sole fishery will restrict bycatch amounts to specified levels, the Council increased the 1992 bycatch rate standards for red king crab to support those fisherman who actively pursue alternative fishing grounds in an attempt to reduce halibut bycatch rates. The Council further recognized that by July 1, Zone 1 will be closed to vessels participating in the directed fisheries for rock sole and "other flatfish," because these fisheries will have taken their primary halibut bycatch allowance specified under the April 3, 1992, emergency rule.

The Council recommended a single halibut bycatch rate standard for the GAO Pacific cod and "bottom rockfish" fisheries of 50 kg per mt groundfish (5 percent). This recommendation was based on Council intent to simplify the GOA incentive program by specifying a single bycatch rate standard for the fisheries under the incentive program, while maintaining the Council's objective of reducing halibut bycatch rates in the GOA trawl fisheries. The Council recognized that the Pacific cod fishery is closed in the GOA for the remainder of 1992 because total allowable catch amounts specified for each of the three regulatory areas of the GOA have been or will be taken. Nevertheless, NMFS is publishing a bycatch rate standard for the GOA Pacific cod trawl fishery consistent with regulations at § 672.26(c). The justification for the Council's recommendations for a 5 percent bycatch rate standard for the Pacific cod and "bottom rockfish" trawl fisheries is discussed in the January 24, 1992, notice of Pacific halibut bycatch rate standards for the GOA fisheries (57 FR 2854)

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 672.26(c) and § 675.26(c). Therefore, he concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1992 as set forth in Table 1. These bycatch rate standards may be revised by notice in the **Federal Register** when deemed appropriate by the Regional Director pending his consideration of the information set forth at § 672.26(c) and § 675.26(c).

Classification

This action is taken under 50 CFR parts 672.26 and 675.26 and complies with E.O. 12291.

To avoid a lapse in vessel accountability under the vessel incentive program, this notice must be effective by July 1, 1992, when the bycatch rate standards specified for the first half of 1992 expire. Without this accountability, prohibited species bycatch rates will increase in the groundfish trawl fisheries, prohibited species bycatch allowances will be reached sooner, specified groundfish trawl fisheries will be closed prematurely, and owners and operators of groundfish trawl vessel will incur additional foregone revenues. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to extend prior notice and comment on this notice beyond June 30 or to delay its effective date. Comments on the bycatch rate standards will be accepted through June 30, 1992, and should be sent to the address noted above.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1992.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE SECOND HALF OF 1992 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

[Halibut bycatch as kg of halibut/mt of allocated groundfish catch]

Fishery and quarter	1992 bycatch standard
BSAI Pacific cod:	
Qt 3	30.0
Qt 4	30.0
BSAI flatfish:	
Qt 3	5.0
Qt 4	5.0
GOA rockfish:	
Qt 3	50.0
Qt 4	50.0
GOA Pacific cod:	
Qt 3	50.0
Qt 4	50.0
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish)	
BSAI flatfish:	
Qt 3	2.5
Qt 4	2.5

[FR Doc. 92-13429 Filed 6-8-92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-92-052PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Proposed Expenses and Assessment Rate for the 1992-93 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the 1992-93 fiscal period (August 1-July 31) under Marketing Order No. 905. This proposed action is needed so the Citrus Administrative Committee (committee) established under the marketing order can pay its expenses and collect assessments from handlers to pay those expenses. This proposed action would enable the committee to perform its duties and the marketing order to operate.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Department Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable citrus fruit during the 1992-93 fiscal period, beginning August 1, 1992, through July 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly

before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee recommended a budget with expenses of $200,000, for the 1992–93 fiscal period, compared with budgeted expenses of $216,000 for 1991–92. The expense items in the 1992–93 budget are for administration of the marketing order, and include such major expenditure items as employee salaries, benefits, and travel; office operations expenses; and the purchase of shipping information. These proposed administrative expense items for 1992–93 are $10,000 higher than those for approved for 1991–92, reflecting inflationary pressures. However, overall proposed expenses for 1992–93 are $16,000 lower than those in approved for 1991–92, because the 1991–92 budget contained an additional budget item of $26,000 to fund committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The committee also recommended a 1992–93 assessment rate of $0.003 per ⅘ bushel carton of fresh fruit shipped, compared with $0.0025 established for 1991–92. Assessment income for 1992–93 is expected to total $187,500, based on estimated shipments of 60,500,000 cartons of assessable fruit. Interest income for 1992–93 is estimated at $4,000, compared with $8,000 estimated for 1991–92. The estimated $8,500 deficit for 1992–93 would be drawn from the committee's reserve fund.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on August 1, 1992, and marketing order requires that the rate of assessment for the fiscal period apply to all assessable Florida citrus fruit during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the committee. Therefore, it is found and determined that comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 905 be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 905.231 is added to read as follows:

§ 905.231 Expenses and assessment rate.

Expenses of $200,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.003 per ⅘ bushel carton of assessable fruit is established for the fiscal period ending July 31, 1993. Any unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13415 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 911

[Docket No. FV–92–008]

Florida Limes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 911 for the 1992–93 fiscal year. Authorization of this budget would permit the Florida Lime Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–690–4244.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 911, regulating the handling of limes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable limes handled during the 1992–93 fiscal year, beginning April 1, 1992 through March 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later

than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Florida limes under this marketing order, and approximately 260 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lime producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year was prepared by the Florida Lime Administrative Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Florida limes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida limes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on January 8, 1992, and unanimously recommended a 1992–93 budget of $226,310. Last season's budget was $269,000. Major expense items include employee benefits ($21,500), salaries ($50,000), travel ($14,000), research ($49,060) and marketing activities ($45,000). The committee recommended a reduced budget for the 1992–93 fiscal year from the last fiscal year's budget based on decreases in expenditures for travel, research and contingencies. Specific marketing and production research project proposals will be forwarded for approval at a later date. Funds to be used for such activities will be held in an escrow account until the specific proposals receive Department approval.

The committee also unanimously recommended an assessment rate of $0.16 per bushel (55 pounds), a decrease of $0.02 from last season. Anticipated shipments of 1.4 million 55-pound bushels of limes would yield $224,000 in assessment income. This, along with $10,310 in interest income on savings would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1991–92 fiscal period, estimated at $219,192, would be within the maximum permitted by the order of three fiscal periods' expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The fiscal year for the marketing order begins on April 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable limes handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 911 be amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 911.231 is added to read as follows:

§ 911.231 Expenses and assessment rate.

Expenses of $226,310 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13422 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 915

[Docket No. FV–92–009PR]

Expenses and Assessment Rate for the Marketing Order Covering Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 915 for the 1992–93 fiscal year (April 1–March 31). These proposed expenditures and assessment rate are needed by the administrative committee established under this order to pay its expenses and collect assessments from handlers to pay those expenses. The proposed action would enable the committee to perform its duties and the order to operate.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington,

DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 915 [7 CFR Part 915] regulating the handling of avocados grown in South Florida. This agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, avocados are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable avocados handled during the 1992-93 fiscal year, beginning April 1, 1992 through March 31, 1993. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under this marketing order, and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This marketing order administered by the Department requires that the assessment rate for a particular fiscal year shall apply to all assessable avocados handled from the beginning of such year. An annual budget of expenses is prepared by the Avocado Administrative Committee (committee) and submitted to the Department for approval. The members of the committee are handlers and producers of avocados. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected shipments of avocados in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and assessment rate are usually acted upon by the committee shortly before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met January 8, 1992, and unanimously recommended a 1992-93 budget with expenditures of $180,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under the marketing order. Budgeted expenditures for 1991-92 were $187,000, while the assessment rate was $0.16. Committee assessment income for 1992-93 is estimated at $176,000, based on shipments of 1,100,000 bushels of assessable avocados, and interest income is estimated at $7,000. The committee plans to place the projected $3,000 surplus in its reserve fund, which is currently well within the maximum authorized under the marketing order.

Major expenditure items in the committee's proposed budget for the 1992-93 fiscal year, compared with those budgeted in 1991-92 (in parentheses), are $130,750 ($143,000) for program administration, $45,250 ($34,000) for production research, and $5,000 ($10,000) for marketing research and development. The proposed program administration expenditures include employee salaries and benefits, office operations, a financial audit, marketing order enforcement, committee travel, a contingency reserve, and miscellaneous expenses. The proposed production research expenditures include $25,000 for water table research by Ghioto, Inc.; $2,750 for grove maintenance research; $2,500 for tree topping and thinning research; $10,000 for pollution biology research; and $5,000 for avocado variety research. The proposed marketing expenditures includes $5,000 for projects to be considered later by the committee.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is deemed appropriate for this action, because approval of the expenses and assessment rate must be expedited. The fiscal year for this marketing order begins on April 1, 1992, and the committee's expenses are incurred on a continuous basis.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 915 be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 915.231 is added to read as follows:

§ 915.231 Expenses and assessment rate.

Expenses of $180,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-13421 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 921, 922, 923, and 924

[Docket No. FV-92-043PR]

Proposed 1992–93 Fiscal Year Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates for the 1992–93 fiscal year (April 1–March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing committees established under these marketing orders to pay marketing order expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the orders to operate.

DATES: Comments must be received by June 19, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Candace J. Mintz, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 205–2829.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 921 [7 CFR part 921] regulating the handling of fresh peaches grown in designated counties in Washington; 922 [7 CFR part 922] regulating the handling of apricots grown in designated counties in Washington; 923 [7 CFR part 923] regulating the handling of cherries grown in designated counties in Washington; and 924 [7 CFR part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Washington peaches, Washington apricots, Washington cherries, and Washington-Oregon prunes are subject to assessments. It is intended that the assessment rates as proposed herein will be applicable to all assessable Washington peaches, Washington apricots, Washington cherries, and Washington-Oregon prunes handled during the 1992–93 fiscal year (April 1–March 31). This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 65 handlers of Washington peaches, 59 handlers of Washington apricots, 63 handlers of Washington cherries, and 32 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 890 Washington peach producers, 190 Washington apricot producers, 1,100 Washington cherry producers and 350 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the U.S. Department of Agriculture (Department), require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted

upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on January 30, 1992, and unanimously recommended 1992–93 fiscal year expenditures and assessment rates for each of these marketing orders. The SFEC is made up of officers of the four stone fruit marketing committees established under these orders. The SFEC is authorized to take this action under the by-laws of the stone fruit marketing committees. The SFEC's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under these orders.

The proposed 1992–93 budgeted expenditures for these marketing orders are higher than those for 1991–92. Most of the higher expenditures reflect salary increases and the addition of a new line item, "Contingency." Contingency funds would be used for payment of accrued vacation and/or sick leave when an employee is terminated or if any of the committees leave the joint office management. The assessment rates for the 1992 season however, remained constant. In addition, each stone fruit committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The proposed expenditures are all for administration of these orders, except for cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing committees share office expenses, based on an agreement among the committees.

For the Washington Fresh Peach Marketing Committee, the SFEC recommended 1992–93 expenditures of $23,578 and an assessment rate of $3.00 per ton of peaches shipped under M.O. 921. In comparison, 1991–92 budgeted expenditures were $21,394 and the assessment rate was $3.00 per ton.

For the Washington Apricot Marketing Committee, the SFEC recommended 1992–93 expenditures of $8,403 and an assessment rate of $4.00 per ton of apricots shipped under M.O. 922. In comparison, 1991–92 budgeted expenditures were $7,760 and the assessment rate was $4.00 per ton.

For the Washington Cherry Marketing Committee, the SFEC recommended 1992–93 expenditures of $112,482 and an assessment rate of $5.00 per ton of cherries shipped under M.O. 923. In comparison, 1991–92 budgeted expenditures were $104,130 and the assessment rate was $5.00 per ton.

For the Washington-Oregon Fresh Prune Marketing Committee, the SFEC recommended 1992–93 expenditures of $18,287 and an assessment rate of $3.00 per ton of prunes shipped under M.O. 924. In comparison, 1991–92 budgeted expenditures were $18,115 and the assessment rate was $3.00 per ton.

This proposed rule provides that comments must be received by June 8, 1992. Extending the comment period until that date will allow all four stone fruit marketing committees to meet and make any necessary adjustments in their proposed 1992–93 expenses and assessment rates prior to issuance of a final rule. The peach, apricot, and cherry committees plan to meet during the second week in May and the prune committee during the fourth week of May to review 1992 season crop and market conditions for these fruits.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Parts 921, 922, 923, and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 921, 922, 923 and 924 be amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.231 is added to read as follows:

§ 921.231 Expenses and assessment rate.

Expenses of $23,578 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new section 922.231 is added to read as follows:

§ 922.231 Expenses and assessment rate.

Expenses of $8,403 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $4.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.232 is added to read as follows:

§ 923.232 Expenses and assessment rate.

Expenses of $112,482 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $5.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

5. A new § 924.232 is added to read as follows:

§ 924.232 Expenses and assessment rate.

Expenses of $18,287 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13417 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 958

[Docket No. FV-92-059]

Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 958 for the 1992–93 fiscal period (July 1, 1992 through June 30 1993). Authorization of this budget would permit the Idaho-Eastern Oregon Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties of Idaho, and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non–major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, onions are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable onions handled during the 1992–93 fiscal period, beginning July 1, 1992 through June 30, 1993. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Eastern Oregon onions under this marketing order, and approximately 450 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be estimated at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met March 24, 1992, and unanimously recommended a 1992–93 budget of $954,312, $62,747 more than the previous year. Major increases are in the Committee expenses, management salary, office salaries, miscellaneous, promotion/advertising, and contingency categories, plus the addition of a compliance survey category.

The Committee also unanimously recommended an assessment rate of $0.11 per hundredweight, $0.01 less than last season. This rate, when applied to anticipated shipments of 7,600,000 hundredweight, would yield $836,000 in assessment income. This, along with $30,000 in interest income and $88,312 from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $800,000 to $900,000, would be within the maximum permitted by the order of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program begins on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to

all assessable Idaho-Eastern Oregon onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 958.236 is added to read as follows:

§ 958.236 Expenses and assessment rate.

Expenses of $954,312 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.11 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1993. Unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13420 Filed 6–8–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 985

[FV-92-045PR]

Expenses and Assessment Rate for Spearmint Oil Produced in the Far West

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 985 for the 1992–93 marketing year established under the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Spearmint Oil Administration Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program and to facilitate program operations. An annual budget of expenses is prepared by the Committee and submitted to the Department of Agriculture (Department) for approval.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, spearmint oil is subject to assessments. It is intended that the assessment rate will be applicable to all assessable spearmint oil handled during the 1992–93 fiscal year, beginning June 1, 1992, through May 31, 1993. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small equity orientation and compatibility.

There are approximately 9 handlers of spearmint oil produced in the Far West who are subject to regulation under the spearmint oil marketing order and approximately 253 producers of spearmint oil in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of the regulated spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay their expenses.

The Committee met on February 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $183,972 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1992–93 marketing year is estimated at $166,000 based on shipments of 2,075,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1992–93 marketing year is estimated at $10,000. In comparison, the 1991–92 marketing year budgeted expenditures were $199,000 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1992–93 budget are $72,000 for program administration, $89,972 for salaries, and $22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1991–92 marketing year were $86,100, $90,600, and $22,000, respectively.

The Committee may expend operational reserve funds of $7,972 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpected funds may be carried to the next marketing year as a reserve.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows.

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 985.312 is proposed to be added as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.312 Expenses and assessment rate.

Expenses of $183,972 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with section 985.41, is established at $0.08 per pound of salable spearmint oil for the 1992–93 marketing year ending May 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1992.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–13423 Filed 6–8–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 998

[Docket No. FV–92–051]

Proposed Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures for administration and indemnification, establish an assessment rate, and authorize continuation of an indemnification reserve under Marketing Agreement 146 for the 1992–93 crop year (July 1, 1992, through June 30, 1993). The proposal is needed for the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay these expenses, and settle indemnification claims during the 1992–93 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

DATES: Comments must be received by June 19, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1992–93 indemnification expenses. This proposed rule would authorize expenditures and establish an assessment rate for the Peanut Administrative Committee for the fiscal period beginning July 1, 1992. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 70 handlers of peanuts covered under the peanut marketing agreement, and approximately 47,000 producers in the 16 States covered under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1992. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on March 4–5, 1992, and unanimously recommended 1992–93 crop year administrative expenses of $1,042,000 and an administrative assessment rate of $0.57 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1991–92 crop year budgeted administrative expenditures were $1,009,258, and the administrative assessment rate was $0.54 per ton.

Administrative budget items for 1992–93 which have increased compared to those budgeted for 1991–92 (in parentheses) are: Executive salaries, $138,364 ($131,775); clerical salaries, 158,366 ($140,000); field representatives salaries, $266,420 ($251,352); payroll taxes, $46,850 ($42,873); employee benefits, $147,000 ($133,500); Committee members travel, $32,000 ($30,000); field representative travel, $107,000 ($95,000); insurance and bonds, $7,500 ($6,500); office rent and parking, $54,000 ($51,000); repairs and maintenance agreements, $6,000 ($4,000); and audit fees, $8,000 ($7,000). Items which have decreased compared to those budgeted for 1991–92 (in parentheses) are: Furniture and equipment, $4,000 ($15,000); office supplies and stationery, $14,000 ($24,000); postage and mailing, $13,000 ($24,000); and employee bonus for 1990 claims work, $0 ($14,258). All other items are budgeted at least year's amounts. The administrative budget includes $9,000 for contingencies.

The Committee also unanimously recommended 1992 crop indemnification expenses of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The $9,000,000 of indemnification coverage to be provided on 1992 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee.

The total recommended assessment rate is $2.57 per ton of assessable peanuts ($0.57 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,828,070 would yield $1,042,000 for program administration and $3,656,140 for indemnification. The indemnification amount, when added to expected cash carry over from 1991–92 indemnification operations of $9,136,000, would provide $12,792,140, which should be adequate for the 1992 fund, and to maintain an adequate reserve.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact no a substantial number of small entities.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 crop year for the program begins on July 1, 1992, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 998 be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 998.405 is added to read as follows:

§ 998.405 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1992, shall be in the amount of $1,042,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification payments, pursuant to the terms and conditions of indemnification applicable to the 1992 crop, effective July 1, 1992, are authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.57 per net ton of farmers, stock peanuts received or acquired other

than from those described in §§ 998.31 (c) and (d). A total of $0.57 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended in providing indemnification benefits on 1992 crop peanuts shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: June 3, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-13418 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

Standard Design Certification Rulemaking Procedures; Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public workshop concerning the procedures to be followed in the first design certification rulemaking proceeding. To facilitate understanding of the issues concerning the establishment of design certification rulemaking procedure, the Commission is making available to the public a paper (SECY-92-170) prepared by the Office of the General Counsel (OGC) which provides a preliminary identification and assessment of important issues related to procedures for design certification rulemaking proceedings. Advance notice of desire to attend the workshop is requested. A 30-day period following the workshop to submit written comments on issues relating to design certification rulemaking procedures is also being provided. Following this workshop and receipt of any written comments the Commission will establish the procedures to be used in the first design certification rulemaking proceeding in the notice of proposed rulemaking (NPR) for that proceeding.

DATES: The workshop will be held on July 20, 1992. Notification of intent to attend the workshop should be received no later than July 1, 1992. Written comments on the topics discussed at the workshop should be received by August 19, 1992.

ADDRESSES: The workshop will be held at the Capitol Hyatt, 400 New Jersey Ave. NW., Washington, DC. Request for copies of the OGC paper (SECY-92-170), NUMARC's submission and OCRE comments, and notification of intent to attend the workshop should be sent to Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Send post-workshop comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Deliver post-workshop comments to: The Office of the Secretary, One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received and the transcript of the workshop may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 8:45 a.m. and 5:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504-1639.

SUPPLEMENTARY INFORMATION:

SUPPLEMENTARY INFORMATION

Introduction

10 CFR part 52 established general procedures and requirements for certification of standard nuclear power plant designs through rulemaking. Under part 52, the public will have an opportunity to submit written comments on the proposed design certification rule, as required by the Administrative Procedure Act (APA). However, part 52 goes beyond the requirements of the APA by providing in a design certification rulemaking the opportunity to request a hearing before an Atomic Safety and Licensing Board. Although hearings in an NRC rulemaking are not unprecedented, e.g., the rulemaking associated with the proposed adoption of the Generic Environmental Statement on Mixed Oxide Fuel (GESMO) (see 40 FR 53056; November 14, 1975, 41 FR 1133; January 5, 1976), the NRC has had little experience with rulemaking hearings.

The Commission has received applications for standard design certifications under 10 CFR part 52 for the GE Nuclear Energy (GE) Advance Boiling Water Reactor (ABWR) (57 FR 9749; March 20, 1992) and the ABB Combustion Engineering Nuclear Power (CE) System 80+ (56 FR 21395; May 8, 1991, modified, 56 FR 23602; May 22, 1991).The NRC also expects to receive a design certification application from Westinghouse Electric (Westinghouse) for the AP-600 in early summer 1992.

In anticipation of the first design certification rulemaking, the Commission directed OGC to prepare a preliminary paper which identifies and analyzes the major procedural steps and associated issues for the notice of rulemaking for the initial design certification proceedings. The OGC paper (SECY-92-170) was prepared after consideration of proposed rulemaking procedures submitted by NUMARC, and comments on NUMARC's proposals provided by OCRE [1]. The Commission now wishes to receive comments on OGC's preliminary paper from the public and the industry, and is making OGC's paper, NUMARC's submission [2], and OCRE's comments available to the public.

The Commission will hold a workshop to provide for public discussion of the significant issues that should be considered in establishing design certification rulemaking procedures, and to provide an opportunity for the public to present their views on design certification rulemaking procedures. In addition, the Commission is providing a 30-day period after the workshop for the public to submit written comments on certification rulemaking procedures. More detailed information will be mailed to all individuals and organizations who notify NRC of their intent to attend and to others who request it.

Following the workshop and receipt of any written comments, the Commission will establish the procedures to be followed in the design certification proceeding in the notice of proposed rulemaking (NPR) for that proceeding.

A tentative agenda and structure for the conduct of the workshop are set forth below. A final agenda and description of the workshop will be provided to all individuals and

[1] NUMARC's and OCRE's submissions are attached to OGC's paper, SECY-92-170.

[2] The Commission is not requesting public comments on Enclosure 2 of the NUMARC submission, "Part 52 Implementation: General Principles," nor will the workshop discuss Enclosure 2 of the NUMARC submission, since that enclosure discusses substantive aspects of design certification rather than procedures for the conduct of design certification rulemaking proceedings.

organizations who notify the NRC of their intent to attend the workshop and to others who request it.

Tentative Workshop Agenda

8–9 a.m. Registration
9–9:05 a.m. Welcome
9:05–9:45 a.m. Address: Chairman Selin
9:45–10 a.m. Break
10–10:10 a.m. Brief description of design certification under 10 CFR part 52
10:10–10:12 a.m. Introduction of Panel Members
10:12–12 p.m. Panel Discussion, Session 1
- Public Comment Hearing Request Period
  - Adequacy of 90—day period
  - Concurrent Period for Submission of Written Comments and Requests for Hearings
- Threshold for Informal Hearing Request
  - Desirability of Threshold for Requesting an Informal Hearing
  - Criteria for Requesting an Informal Hearing
  - Who makes Decision on Informal Hearing Request: Commission or Licensing Board?

12–1 p.m. Lunch
1–2:45 p.m. Panel Discussion, Session 2
- Scope of Licensing Board Authority in Informal Hearing
  - "Limited Magistrate," "Full Magistrate," or "Initial Decisionmaker"
  - Sua Sponte Authority of the Licensing Board
- Conduct of Informal Hearing
  - Oral Presentations; Questions by Licensing Board
  - Role and Responsibilities of the Commenting parties, the Applicant, and the NRC Staff

2:45–3 p.m. Break
3–4:45 p.m. Panel discussion, Session 3
- Requests for Additional Hearing Procedures and Formal Hearings
- Use of, and Access to, Proprietary Portions of the Design Certification Application
- Separation of Functions and *EX PARTE* Limitations
- Negotiated Rulemaking

4:45–4:55 p.m. Break
4:55–5:15 p.m. Questions from audience; other topics which panelists wish to discuss
5:15–5:25 p.m. Panelists' recommendations
5:25–5:30 p.m. Closing remarks
5:30 p.m. Adjournment

Tentative Workshop Structure

A "roundtable panel discussion" is currently being considered for the workshop. The panelists will be chosen by the NRC to represent a wide range of interests, in order to assure that a broad perspective is obtained from the public on the issues associated with establishing design certification rulemaking procedures. The NRC is arranging to have the following organizations represented on the panel: An individual from OGC and an individual representing the NRC Staff, a representative from the nuclear industry, a representative from the U.S. Department of Energy (DOE), three public interest groups, and an individual representing the states. A moderator will preside over the panel discussion.

The panel discussions will be divided into three sessions for administrative purposes. Before the first session, an OGC representative will provide a brief overview of design certification under part 52. Panel discussion on each topic would begin with a concise description by OGC of the topic based upon OGC's paper. Each panelist would then have up to two minutes to present a concise statement of position. Thereafter, there would be a general dialogue between the panelists on the topic. At least five minutes before the time allotted to the topic expires, the moderator would ask for questions from the audience, or read questions from the audience which are presented in written form. Cards will be provided to the audience for written questions, which will be periodically collected and provided to the moderator.

Following the final panel discussion session, an opportunity will be provided for the audience to raise any other matters not discussed by the panel, or to ask further questions of the panel on issues previously discussed in the panel sessions. Each panelist (except the OGC representative) will then be afforded a brief (approximately two minute) opportunity to present final recommendations.

Other Information

A final agenda and list of panel members will be available two weeks before the workshop and will be mailed to all individuals and organizations who notify the NRC of their intent to attend the workshop, and to others who request it.

A transcript will be made of the workshop, which will be available for public inspection in the NRC Public Document Room five days after the workshop.

Dated at Rockville, MD, this 2d day of June, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–13409 Filed 6–8–92; 8:45 am]

BILLING CODE 7590–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 700

Definitions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 23, 1992, the NCUA issued a proposed revision to its regulations defining "risk assets." The proposed rule was published in the **Federal Register** on May 1, 1992 (see 57 FR 18836). The NCUA Board requested that comments on the proposed rule be submitted on or before June 1, 1992. Due to requests made, the Board has decided to reopen the comment period. All comments received on or before June 30, 1992, will be considered by NCUA.

DATES: Comments must be submitted by June 30, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, or Kimberly A. Iverson, Federal Program Officer, Office of Examination and Insurance at the above address, or telephone (202) 682–9640.

By the National Credit Union Administration Board on June 4, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–13518 Filed 6–8–92; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–167–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, which would have required the implementation of a corrosion

prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–167–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–NM–167–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–167–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that is applicable to Model DC–10 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 30, 1990 (55 FR 49641). The NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR Part 125 by Section 125.1. Because the applicability of the rule would include all Model DC–10 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the reference McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued

notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussion, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occured on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitve inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relations between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR Part 91 or Part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area, as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of part 43, requires that:

"* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Adminstrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these correction actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In

lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under § 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) (current status) of AD's and current inspection status be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by § 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such determination is made, an operator would be required to accomplish one of the following actions:

1. submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the operator's Model DC-10 fleet; or

2. submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model DC-10 fleet; or

3. submit date substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC-10 fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC-10 fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC-10 fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of

corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC-10 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One commenter contends that the proposed program requires too much phased maintenance, which is contradictory to the Aging Aircraft Task Force's (AATF) recommendations to minimize phased maintenance. The commenter suggests that the FAA reevaluate and adjust the proposed inspection intervals to minimize phased maintenance. The FAA does not concur. The Document provides a baseline corrosion prevention and control program which establishes a "minimum" standard. Affected operators would have the opportunity to adjust maintenance intervals by obtaining FAA approval of deviations from the specific program defined in the Document.

One commenter notes that there are 15 corrrosion tasks listed in the Document that are not airworthiness concerns; therefore, these tasks should be deleted from the requirements of the proposed rule. The FAA disagrees. Although the commenter may consider the referenced tasks as "not airworthiness concerns," the selection of the corrosion tasks specified in the Document is a product of a series of extensive group meetings, comprised of aviation industry and government experts. In each case, the group came to a consensus to include preventative procedures that would preclude the serious repairs required by findings of Level 3 corrosion, which is definitely an airworthiness concern. The corrosion tasks referred to by the commenter are those entailing such preventative procedures.

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnel Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard **Federal Register** style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 244 airplanes of U.S. registry would be affected by this AD. It would take approximately 16 work hours per area to accomplish the inspection of each of the 59 areas called out in the McDonnell Douglas

Document. The average labor cost would be $55 per work hour. The total cost to inspect each airplane would be $51,920. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $12,668,480.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilites among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Polices and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, postive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90–NM–167–AD.

Applicability: All Model DC–10 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards Office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4607, "DC–10/KC–10 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereafter refered to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note: A "corrosion task," as defined in the Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks complete in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–10 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–10 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC-10 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspections results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13503 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-166-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Including Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes, which would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5323; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-NM-166-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that

is applicable to Model DC–9 series airplanes, including Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 30, 1990 (55 FR 49638). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4606, "DC–9/MD–80 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD action is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including in the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by section 125.1. Because the applicability of the rule would include *all* Model DC–9 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed. Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the referenced McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, as discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e, to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitive inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules

and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR part 91 or part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area, as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of Part 43, requires that:

> "* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these corrective actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed (and retained in paragraph (b) of this supplemental notice), the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under Section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, Sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and § 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph

121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by Section 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the Model DC–9 series, DC–9–80 series, C–9 series, and MD–88 airplanes (hereafter referred to as "Model DC–9 series") in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model DC–9 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC–9 series fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC–9 series fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC–9 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragraph (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC–9 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragraph (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be

accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One commenter contends that the proposed program requires too much phased maintenance, which is contradictory to the Aging Aircraft Task Force's (AATF) recommendations to minimize phased maintenance. The commenter suggests that the FAA reevaluate and adjust the proposed inspection intervals to minimize phased maintenance. The FAA does not concur. The Document provides a baseline corrosion prevention and control program which establishes a "minimum" standard. Affected operators would have the opportunity to adjust maintenance intervals by obtaining FAA approval of deviations from the specific program defined in the Document.

One commenter notes that there are 15 corrosion tasks listed in the Document that are not airworthiness concerns; therefore, these tasks should be deleted from the requirements of the proposed rule. The FAA disagrees. Although the commenter may consider the referenced tasks as "not airworthiness concerns," the selection of the corrosion tasks specified in the Document is a product of a series of extensive group meetings, comprised of aviation industry and government experts. In each case, the group came to a consensus to include preventative procedures that would preclude the serious repairs required by findings of Level 3 corrosion, which is definitely an airworthiness concern. The corrosion tasks referred to by the commenter are those entailing such preventative procedures.

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's, this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnell Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard Federal Register style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 1,655 Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) airplanes, of the affected design in the worldwide fleet. It is estimated that 1,016 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 99 areas called out in the McDonnell Douglas document, and for an average labor cost of $55 per manhour, the total cost to inspect each airplane would be $87,120. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $88,513,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90-NM-166-AD.

Applicability: All Model DC-9 series airplanes, including Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," Revision 1, dated December 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the

cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note: Throughout this AD, the term "Model DC–9 series" is used to refer to all McDonnell Douglas Model DC–9 series airplanes, including Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes.

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4606, "DC–9/MD–80 Corrosion Prevention and Control Document," MDC K4607, Revision 1, dated December 1990 (hereafter referred to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note: A "corrosion task," as defined in the section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding Section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accompish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model DC–9 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–9 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–9 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with Section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspections results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2120–0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13508 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-NM-165-AD]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, which would have required the implementation of a corrosion prevention and control program. That proposal was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes; these incidents have jeopardized the airworthiness of the affected airplanes. This action revises the proposed rule by including an optional procedure that would require the accomplishment of specific inspection procedures, rather than a maintenance program change; and by eliminating certain proposed reporting and other administrative requirements. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to the problems associated with corrosion.

DATES: Comments must be received by July 24, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-165-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Cecil, Airframe Branch, ANM-120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5322; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receiopt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-NM-165-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 90-NM-165-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to add an airworthiness directive (AD) that is applicable to Model DC-8 series airplanes was published as a notice of proposed rulemaking (NPRM) in the Federal Register on November 30, 1990 (55 FR 49634). That NPRM would have required that operators revise their FAA-approved maintenance programs to include a corrosion prevention and control program as specified in McDonnell Douglas Document Number MDC K4608, "DC-8 Corrosion Prevention and Control Document." That NPRM was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that have jeopardized the airworthiness of the affected airplanes. This condition, if not corected, could degrade the structural capabilities of the affected airplanes.

Based on a review of the comments received in response to the notice, and extensive discussions both internally and with the regulated industry, the FAA has reconsidered the specific approach it previously had taken in addressing the identified unsafe condition. The FAA has become aware of two factors that necessitate providing an alternative to what was proposed:

1. In accordance with existing bilateral airworthiness agreements with foreign countries, the FAA recognizes that one of the purposes of this AD action is to advise foreign authorities of the unsafe condition to which the proposed AD is addressed, and to provide them with guidance as to appropriate methods for correcting the unsafe condition. The original proposal would have required that operators revise their FAA-approved maintenance/inspection programs to include a corrosion prevention and control program. While such a programmatic approach may be effective for U.S. carriers, other countries do not regulate carriers in the same way. Specifically, foreign authorities may not have the same regulatory system of "approved maintenance programs" to use as the method for implementing the changes that would be required by the proposal. Since the AD is formulated to address a worldwide system for preventing unsafe levels of corrosion, the FAA considers that it is appropriate to include provisions for addressing the corrosion problem on a task-by-task basis. Accordingly, including in the proposed AD a requirement to "perform the corrosion tasks" is a more appropriate method for advising the foreign authorities of the necessary corrective action.

2. While the vast majority of affected U.S.-registered airplanes are operated under FAA-approved maintenance/inspection programs, there are some airplanes that are not so operated, namely, certain airplanes that are excepted from the requirements of FAR part 125 by § 125.1. Because the applicability of the rule would include all Model DC-8 series airplanes, those "excepted" airplanes would still be subject to the AD's requirements; however, because they are not operated under an FAA-approved maintenance/inspection program, their operators would not have been able to comply with the AD as originally proposed.

Under these circumstances, operators of these airplanes would have been required to obtain approval of an alternative method of compliance that would enable them to comply with the proposed AD by accomplishing the specified corrosion tasks.

In order to address both of these issues, the FAA has revised the proposal specifically to provide an alternative for compliance by accomplishment of the corrosion tasks specified in the referenced McDonnell Douglas document. The optional procedure of revising the maintenance program would remain available, however, to all operators operating under such programs.

In implementing the approach that was proposed in the originally issued notice, the FAA now considers that there may be inherent in it unnecessary administrative burdens on affected operators, and inflexibility in the ability of operators to administer and fulfill the purpose of the program, which is to prevent unsafe levels of corrosion. The reasons prompting this reconsideration, as well as other changes in the proposed rule, are discussed below.

General Changes

The original notice proposed to require a change in operators' FAA-approved maintenance/inspection programs and to require submission of reports to the FAA Aircraft Certification Office (ACO) to ensure that changes were being implemented to the program in a way that fulfilled the objective of the AD, i.e., to maintain the airplane fleet at an acceptable level of corrosion (defined as Level 1). As explained previously, the FAA now considers it more appropriate, in some cases, to implement the program described in the Document by specific inspection requirements, rather than by mandating a program change; and to permit operators to avoid unnecessary recordkeeping requirements by allowing them the option of adopting a maintenance program change with the approval of the FAA.

The roles of the Principal Maintenance Inspector (PMI) and the Manager of the Los Angeles ACO have been revised with regard to the requirements of the proposed AD that are applicable to those operators having FAA-approved maintenance programs. Based on a review of general comments received in response to the original notice and internal discussions, the FAA now has determined that, for those affected operators, it is more appropriate for the PMI to serve as the primary point of FAA oversight for the actions regarding this proposed AD. Because the proposed corrosion prevention and control program is so integral to the maintenance/inspection programs of operators, and because the PMI normally has oversight for those maintenance/inspection programs, the FAA considers it appropriate to designate the PMI as the prime liaison for the mandated corrosion program as well. Doing so will eliminate any possibility of duplication of effort that otherwise could have occurred on the part of the PMI and the ACO.

Therefore, the supplemental notice now would provide for the approval of certain revisions to the corrosion task repetitive inspection intervals and recordkeeping methods to be made by the PMI rather than the Manager of the Los Angeles ACO. The supplemental notice also would require that reports of determinations of Level 3 corrosion be submitted to the PMI rather than the ACO. These revisions to the proposal would permit the PMI's to continue to serve as the FAA's critical link with the operators; their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD.

The PMI will coordinate closely with the ACO when engineering issues arise. As a tool to define the responsibilities of the PMI's and to define the relationship between the PMI and the ACO specifically with regard to this AD, the FAA is developing detailed internal guidance for the PMI's to consider when approving corrosion prevention and control programs and related actions as being in compliance with this proposed AD. (When completed, a copy of this guidance material will be placed in the Rules Docket related to this AD action.)

Information has been added to this supplemental notice (by means of a "Note") to clarify the cognizant FAA official (or office) who is responsible for the approval of inspection schedules and revisions to such schedules submitted by different operators, and to whom various reports must be submitted. The term "the FAA" has been substituted throughout this supplemental notice where previously references were made to specific FAA officials/offices. However, this term is defined differently for different operators, as follows:

1. For those operators who comply with the rule by accomplishing the corrosion tasks specified in the referenced McDonnell Douglas document (the task-by-task approach), "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)."

2. For those operators operating under FAR part 121 or 129 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)."

3. For those operators operating under FAR part 91 or part 125 who comply with the rule by revising their maintenance/inspection program, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Specific Provisions of the Supplemental Notice

Paragraph (a) of the supplemental notice has been revised to set forth the compliance times for the initial "corrosion task" of each corrosion inspection area. These compliance times are extracted from the Document. In order to be consistent with what was originally proposed, the compliance times specified in paragraph (a) are measured from a date one year after the effective date of the final rule. Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repetitive (R) interval" for the area as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) of the supplemental notice includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule.

Paragraph A. of the original notice contained a "Note" to inform the public that all structure found corroded or cracked was required to be addressed in accordance with FAR part 43. Section 43.13, which is the relevant provision of part 43, requires that:

"* * * persons performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator."

Since issuance of the original notice, the FAA has reconsidered this item and has determined that more specific and useful guidance as to the necessary action to be taken is set forth in the Document itself, within the definition of a "corrosion task." Therefore, this note has been revised to reference this portion of the Document and to emphasize the importance of these corrective actions. The new note explains that a "corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well.

Paragraph (b) of the supplemental notice provides an optional method of complying with the proposed rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document, or an equivalent program approved by the FAA.

In response to questions previously raised concerning recordkeeping and record retention requirements as they relate to the programmatic approach originally proposed [and retained in paragraph (b) of this supplemental notice], the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this supplemental notice, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under § 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of parts 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, parts 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and § 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in § 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed by operators regarding the recordkeeping obligations imposed by § 121.380 with regard to this proposed rule, the FAA has included in the supplemental notice certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (As discussed previously, the FAA is currently developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the supplemental notice provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the supplemental notice sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is found. A similar requirement was proposed in the originally issued notice; however, upon reconsideration, the FAA finds that the original notice was ambiguous as to which corrosion findings operators were required to report. This particular requirement has been changed to clarify that it is upon the "determination" of Level 3 corrosion (not merely the "finding" of it) that the operator must notify the FAA. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the operator's Model DC–8 fleet; or

2. Submit a report of the determination to the FAA and complete the corrision task in the affected area on the remainder of the operator's Model DC–8 fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, if appropriate, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model DC–8 fleet.

Paragraph (d)(2) of the supplemental notice specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model DC–8 fleet is detected in a timely manner.

Paragraph (d)(3) of the supplemental notice would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model DC–8 fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that an operator, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective active is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (d). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the supplemental notice is similar to paragraph F. of the original notice in that it concerns adding airplanes to an operator's fleet and procedures that must be followed with regard to corrosion prevention and control. However, the applicability of paragrah (f) of the supplemental notice has been expanded to include not only air carrier operators, but all operators. The FAA has determined that the need to ensure that corrosion is prevented and controlled is equal for all Model DC–8 series airplanes, whether they are newly acquired by air carrier operators or other types of operators.

Additionally, proposed paragrah (f) differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prvention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The supplemental notice has been clarified to state that the specified procedures would be required to be accomplished before any operator places into service any airplane subject to the requirements of the proposed rule.

Paragraph (g) of the supplemental notice would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to the McDonnell Douglas Corporation. A note has been added to this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

General Comments Received in Response to the Original Notice

One foreign operator questions the procedure for submitting reports from airlines operating under FAA registration and European maintenance. In order to be in phase with the reporting requirements to PMI's, this operator asks if the reports should be copied to the Brussels or Frankfurt FAA maintenance base. The FAA notes that procedures currently exist in which operators of U.S.-registered, foreign-maintained aircraft submit the required reports to the local cognizant regulatory authority.

Textual Changes to the Proposal

References to the cited McDonnell Douglas Document have been revised to read, "Revision 1," which was issued in December 1990. The FAA has reviewed and approved this revision, which was issued subsequent to the issuance of the original notice. Revision 1 merely provides further clarification and editorial changes to the original issue of the Document. The supplemental notice cites Revision 1 as the appropriate source for service information.

References to the program have been changed to read, "corrosion prevention and control program," rather than merely a "corrosion control program." This phrasing is more descriptive of the addressed program and is consistent with the applicable phrasing in the Document.

The format of the supplemental notice has been restructured to be consistent with the standard **Federal Register** style.

Since the changes discussed above address a number of issues that were not specifically addressed in the originally proposed rule, the comment period has been reopened for 45 days to solicit comments from the public on these changes.

There are approximately 337 Model DC–8 series airplanes of the affected design in the worldwide fleet. It is estimated that 222 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,922 manhours per airplane to accomplish the requried actions. At an average labor cost of $55 per manhour, the total cost to inspect each airplane would be $105.710. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $23,467,620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the capiton "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Adminsitrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 90–NM–165–AD.

Applicability: All Model DC–8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

Note: This AD references McDonnell Douglas Document Number MDC K4608, "DC–8 Corrosion Prevention and Control Document," Revision 1, dated Decemer 1990, for corrosion tasks, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in that Document. Where there are differences between the AD and the Document, the AD prevails.

Note: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Los Angeles Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of McDonnell Douglas Document Number MDC K4608, "DC–8 Corrosion Prevention and Control Document," Revision 1, dated December 1990 (hereafter referred to as "the Document"), in accordance with the procedures of the Document, and the schedule specified in paragraph (a)(1) and (a)(2) of the AD.

Note: A "corrosion task," as defined in the section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of this Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "corrosion inspection area" defined in section 4 of the Document as follows:

(i) For aircraft areas that have not yet reached the "implementation age" (IA) as of one year after the effective date of this AD, initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For aircraft areas that have exceeded the IA as of one year after the effective date of this AD, initial compliance must occur within the R interval for the area, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD, initial compliance must occur for all areas within one R interval, or within six years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the intitial tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each "corrosion inspection area" must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR § 91.417 or § 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days.

Note: Notwithstanding section 2.1, paragraph 14, of the Document, any extensions to an IA must be approved in accordance with paragraph (h) of this AD.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination of the FAA and complete the corrosion task in the affected areas on all Model DC–8 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model DC–8 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note: Notwithstanding the provisions of section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model DC–8 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraph (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination a means approved by the FAA must be implemented to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas Corporation in accordance with section 5 of the Document.

Note: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Issued in Renton, Washington, on May 14, 1992.

Darrell M. Pederson,

Acting Manager, Transportation Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13509 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–10]

Proposed Alteration of Transition Area; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: An error was discovered in the notice of proposed rulemaking on the alteration of the Transition Area at Dunkirk, NY, that was published in the Federal Register on April 27, 1992 (57 FR 15265), Airspace Docket No. 91–AEA–10. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Curtis L. Brewington, (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 91–AEA–10, published on April 27, 1992 (57 FR 15265), proposed to amend the description of the 700 foot Transition Area established at Dunkirk, NY. An error was discovered in one of the bearings used from the Chautauqua County/Dunkirk Airport, Dunkirk, NY. This action corrects that error.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 91–AEA–10, as published in the Federal Register on April 27, 1992, is corrected to read as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA TA NY Dunkirk, NY
Chautauqua County/Dunkirk Airport, Dunkirk, NY
(lat. 42°29'36"N, long. 79°16'20"W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Chautauqua County/Dunkirk Airport and within a 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport.

Issued in Jamaica, New York, on May 22, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–13308 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–29]

Proposed Establishment of Transition Area: Walnut Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area located at Walnut Springs, TX. The development of a new special instrument approach procedure (SIAP) to the Flat Top Ranch Airport has made this proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the very high frequency omninavigational range/distance measuring equipment (VOR/DME) runway (RWY) 18 SIAP. If adopted, this proposal would change the status of the Flat Top Ranch Airport from visual flight rules (VFR) only, to include operations under instrument flight rules (IFR).

DATES: Comments must be received on or before August 1, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–29, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–29." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing

date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193—0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Walnut Springs, TX. The development of a new VOR/DME RWY 18 SIAP to the Flat Top Ranch Airport has made this proposal necessary. The intended effect of this proposal is to provide controlled airspace for aircraft executing the VOR/DME Runway 18 SIAP. If this proposal is adopted, the status of the Flat Top Ranch Airport would change from VFR only, to include IFR operations. A description of the transition area would be published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration, proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed as follows:

Section 71.181 Designation

* * * * *

Walnut Springs, TX. [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Flat Top Ranch Airport (latitude 32°03'35"N., longitude 097°47'40"W.).

* * * * *

Issued in Fort Worth, TX, on May 22, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92–3504 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AGL–17]

Proposed Modification of Transition Area and Control Zone; Mitchell, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing Mitchell, SD, transition area and control zone by updating the geographic position of Mitchell Municipal Airport, Mitchell, SD, and correcting the Mitchell VOR/DME radial from 300 to 301. This proposal would also increase the lengths of the northwest and southeast control zone extensions to accommodate existing standard instrument approach procedures (SIAPs) to Mitchell Municipal Airport. The intended effect of this action is to ensure segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 24, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 91–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–AGL–17". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in his notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East

Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Mitchell, SD, transition area and control zone by updating the geographic position of Mitchell Municipal Airport, Mitchell, SD, and correcting the Mitchell VOR/DME radial from 300 to 301. The proposal would also increase the lengths of the northwest and southeast control zone extensions to accommodate existing SIAPs to the airport.

The FAA finds it necessary to alter the designated airspace to ensure that the procedures will be contained within controlled airspace. The minimum descent altitude for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The airspace designations for the transition area and control zone listed in this document are published in sections 71.171 and 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations would be published subsequently in Handbook 7400.7, if this regulation is promulgated.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones, transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AGL SD CZ Mitchell, SD [Revised]
Mitchell Municipal Airport, Mitchell, SD
(lat. 43°46'29" N., long. 98°02'18" W.)
Mitchell VOR (MHE)
(lat. 43°46'37" N., long. 98°02'14"W.)

Within a 4.2 nautical mile radius of Mitchell Municipal Airport and within 2.4 nautical miles each side of the Mitchell VOR/DME 149° radial, extending from the 4.2 nautical mile radius zone to 7 nautical miles southeast of the VOR/DME; and within 2.4 nautical miles each side of the Mitchell VOR/DME 301° radial, extending from the 4.2 nautical mile radius zone to 7 nautical miles northwest of the VOR/DME. This control zone is effective during the specific dates and times published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation

* * * * *

AGL SD TA Mitchell, SD [Revised]
Mitchell Municipal Airport, Mitchell, SD
(lat. 43°46'29" N., long. 98°02'18"W.)
Mitchell VOR (MHE)
(lat. 43°46'37"N., long. 98°02'14"W.)

That airspace extending upward from 700 feet above the surface within a 7.4 nautical mile radius of Mitchell Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within 4 nautical miles southwest and 8 nautical miles northeast of the Mitchell VOR/DME to 16 nautical miles southeast of the VOR/DME; and within 4 nautical miles northeast and 8 nautical miles southwest of the Mitchell VOR/DME 301° radial, extending from the VOR/DME to 16 nautical miles northwest of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within 4 nautical miles southwest and 8 nautical miles northeast of the Mitchell VOR/DME, 149° radial, extending from the VOR/DME to 16 nautical miles southeast of the VOR/DME; and within 4 nautical miles northeast and 8 nautical miles southwest of the Mitchell VOR/DME 301° radial, extending from the VOR/DME to 16 nautical miles northwest of the VOR/DME; and that airspace southwest of Mitchell within the area bounded on the east by V—159, on the south by V–148 and Nebraska/ South Dakota state line, on the west by a line from lat. 43°00'00"N., long. 99°00'00"W.; to lat. 44°00'00"N., long. 99°43'00"W.; and on the north by the Pierre, SD, 1,200 foot Transition Area and V–120.

* * * * *

Issued in Des Plaines, Illinois, on May 29, 1991.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–13506 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[IDocket No. 911184–1284]

Limit on Duty-Free Insular Watches in Calendar Year 1992; Withdrawal of Proposed Rule

AGENCIES: Import Administration, International Trade Administration, Commerce; Office of Territorial and International Affairs, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing the proposed rule to amend rules which govern duty-exemption allocations and duty-refund entitlements for watch procedures in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands (15 CFR part 303) which was published in the **Federal Register** on January 6, 1992 (57 FR 384) as no longer necessary (see Supplementary

Information, below). The effect of this withdrawal will be to continue the duty-exemption limit and shares established in 1991.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, Statutory Import Programs Staff, room 4211, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–1660.

SUPPLEMENTARY INFORMATION: Section 110 of Public Law 97–446 (96 Stat. 2331) (1983) (19 U.S.C. 1202 note) authorizes the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year as well as the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Section 303.3(a) of this part provides that the limit and the respective territorial shares established for the previous year shall remain in effect if the Secretaries do not establish a new limit and shares. Our review of the industry's needs and the territories' interests since publication of the proposed rule persuades us that leaving the existing limit and shares in place will adequately serve those needs and interests (see 56 FR 9621, March 7, 1991).

Alan M. Dunn,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 92–13513 Filed 6–8–92; 8:45 am]

BILLING CODE 3810-DS-M and 4310-93-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–30772; International Series Release No. 393; File No. S7–13–92]

RIN 3235–AE41

Short Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment several amendments to Rule 10a–1 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") and an amendment to Rule 3b–3 under the Exchange Act. The proposed amendments to Rule 10a–1 would: (1) Provide an exception for a short sale that equalizes the opening price of a foreign security on a United States exchange with its price in the principal foreign market for the security; (2) exclude from application of the Rule transactions in corporate bonds and debentures effected on an exchange; and (3) codify a staff no-action position relating to certain liquidations of index arbitrage positions, subject to certain modifications. In addition, the proposed amendments to Rule 10a–1 would restructure and redesignate certain current provisions of Rule 10a–1. The proposed amendment to Rule 3b–3 would clarify the definition of ownership of a security.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Interested persons should submit three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549, and should refer to File No. S7–13–92. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Jr. or George E. Scargle, Office of Legal Policy and Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

A. Background

The Securities and Exchange Commission ("Commission") is publishing for public comment proposed amendments to Rules 3b–3 [1] and 10a–1 ("Rule 10a–1" or "Rule") [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] Rule 3b–3 under the Exchange Act defines the term "short sale," [4] and Rule 10a–1 governs short sales generally. Section 10(a) of the Exchange Act [5] authorizes the Commission to regulate short sales of securities registered on national securities exchanges.[6]

Paragraph (a) of Rule 10a–1 covers transactions in any security registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange ("exchange-traded securities"), if trades in such security are reported pursuant to an effective transaction reporting plan.[7] Paragraph (a), therefore, also applies to over-the-counter ("OTC") transactions in exchange-traded securities that are reported pursuant to an effective transaction reporting plan. Paragraph (b) applies to transactions on a national exchange in securities that are not covered by paragraph (a). Transactions in nonexchange-traded securities and transactions in securities covered by paragraph (b) that are effected in the OTC market are not subject to the Rule.[8]

Rule 10a–1(a)(1) provides that, subject to certain exceptions, short sales of securities covered by the Rule may be effected only (1) at a price above the price at which the immediately preceding sale was effected ("plus tick"), or (2) at the last sale price if it was higher than the last different price ("zero-plus tick").[9] The price at which

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[1] 17 CFR 240.3b–3.

[2] 17 CFR 240.10a–1.

[3] 15 U.S.C. 78a *et seq.*

[4] The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." 17 CFR 240.3b–3 (first sentence).

[5] 15 U.S.C. 78j(a).

[6] Congress granted the Commission plenary power to regulate short sales in such securities to "purge the markets of the abuses connected with these practices." *See* Stock Exchange Practices, Report of the Senate Comm. on Banking and Currency, S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934). See also H.R. Rep. No. 1383, 73d Cong., 2d Sess. 11 (1934). Following a Commission inquiry into the effects of concentrated short selling in the 1937 market break, the Commission in 1938 adopted Rule 10a–1 which prohibited all short sales in exchange-traded securities at or below the last sale price, subject to certain exceptions. *See* Securities Exchange Act Release No. 1548 (January 24, 1938), 3 FR 213 ("Release 34–1548"). In that release, the Commission also adopted Rule 3b–3.

For a detailed discussion of the development of Rule 10a–1, see Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530.

[7] The Commission's transaction reporting rule defines an "effective transaction reporting plan" as a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. 17 CFR 240.11Aa3–1(a)(3).

[8] 17 CFR 240.10a–1(a)(1)(ii). See generally I. Pollack, Short-Sale Regulation of NASDAQ Securities 18–28 (July 1986), reprinted in Short Selling Activity in the Stock Market: The Effects on Small Companies and the Need for Regulation, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Affairs, 101st Cong., 1st Sess. 270–356 (1989). Although the Rule applies to any security registered on, or admitted to UTP on, a national securities exchange for which last sale information is reported pursuant to an effective reporting plan [which would include certain OTC National Market System ("NMS") designated securities], the Commission specifically excluded from the coverage of the Rule transactions in OTC NMS securities that are traded on a listed or UTP basis. See Securities Exchange Act Release No. 22975 (March 6, 1986), 51 FR 8801 (adopting 17 CFR 240.10a–1(a)(1)(i)). See also n. 10 *infra*.

[9] 17 CFR 240.10a–1(a)(1).

short sales may be effected is established by reference to the last sale price reported in the consolidated system [10] or on a particular marketplace.[11]

The Rule is designed to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. This reduces the ability to employ short selling as a manipulative device to accelerate a decline in the price of a security by exhausting all bids at one price level.[12] At the same time, the Rule allows for relatively unrestricted short selling in an advancing market.

B. Summary of Proposed Amendments

Since the adoption of the Rule in 1938, the Commission has, from time to time, and in response to market developments and changing trading practices, exempted certain types of transactions from the Rule. These exceptions are designed to permit transactions that are believed to be beneficial to the markets or that present little risk of the kind of manipulative or destabilizing trading that the Rule was designed to address.[13] The amendments proposed today are designed to except certain additional transactions that the Commission believes need not be subject to the "tick" provisions of the Rule, and to redesignate certain current exceptions to the Rule.

The Commission is proposing to add new paragraph (e)(12) to the Rule to provide an international equalizing exception from the "tick" provisions of the Rule.[14] The exception would permit short sales in the United States ("U.S.") in order to equalize the opening price of the security on a U.S. exchange with its price in the principal foreign market for the security.[15] This proposed amendment corresponds to an NYSE petition for rulemaking.

The second proposed amendment responds to a rulemaking petition by the Amex and would exclude from the coverage of the Rule transactions in corporate bonds effected on an exchange. The amendment would accomplish this by excluding bonds and debentures from the application of paragraph (b) of the Rule.

In addition, the Commission is proposing to add new paragraph (g) to the Rule to codify with modifications a staff no-action position regarding the liquidation of existing index arbitrage positions.[16] The proposed amendment would apply to the sale of long baskets of stock and the purchase of index futures or options without requiring the aggregation of the index arbitrage positions with short positions in those stocks in certain other proprietary accounts if those other short positions are fully hedged.

The Commission is proposing structural revisions to the Rule to redesignate current paragraph (e)(12), which defines "depositary receipt" and "third market maker," as paragraph (h), as well as revise newly designated paragraph (h), to more fully account for the definitional character of that section; to redesignate current paragraph (e)(13), which relates to positions acquired while acting as a block positioner, as paragraph (f), as well as revise newly designated paragraph (f), to reflect more accurately the fact that the paragraph does not provide an exception but rather deals with the computation of a person's net long position; and to redesignate paragraph (f) as paragraph (i), in order to locate the Rule's residual exemptive authority at the Rule's end.

Finally, the Commission is proposing to amend Rule 3b–3 to clarify that the ownership of a security must be based upon a fixed, currently ascertainable amount of a security at a fixed, currently ascertainable price.

II. Discussion of Proposed Amendments

A. International Equalizing Exception

As the internationalization of the world's securities markets has progressed, the Commission has recognized the need to provide a flexible response to rapidly evolving market developments without compromising the fundamental underpinnings of the federal securities laws.[17] Specifically, the Commission has noted the increasing tendency for securities of "world-class" issuers to be traded not only in the markets of their country of origin, but also in other financial centers around the world.[18] The market price of such world-class issuers may diverge from market to market, depending upon currency fluctuations, the information content available to each market, tax considerations, and other factors.

Pursuant to requests from officials of the NYSE in recent years, the Commission's staff has provided short sale relief to NYSE specialists in foreign NYSE-listed securities on a case-by-case basis. Where the specialist sought to open trading in a security by selling short on a "minus tick" or "zero-minus tick" with reference to the prior day's closing price on the NYSE, because the latest price for the security on the principal foreign exchange was lower than the previous closing price for the security (or related security) on the NYSE, the specialist has been permitted to equalize the U.S. price with the foreign price. Relief has been granted provided that the principal market for the security was an established foreign securities exchange and the specialist's offer on a minus tick was necessary to provide a narrower spread. The NYSE also filed a petition for rulemaking [19] to

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[10] 17 CFR 240.10a–1(a)(1). The "consolidated system," also known as the Consolidated Tape, refers to "the consolidated transaction reporting system for which a plan originally was submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the [Exchange] Act * * *" 17 CFR 240.11Ac1–1(a)(16). The Consolidated Tape Association ("CTA"), comprised of various national securities exchanges and the National Association of Securities Dealers ("NASD"), collects and disseminates reports for transactions on those markets on the Consolidated Tape.

[11] 17 CFR 240.10a–1(a)(2). Pursuant to Rule 10a–1(a)(2), an exchange may require that short sales effected on that exchange be measured by reference to the last sale on that exchange rather than by reference to the last sale as reported on the consolidated system. The New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") have exercised this option. *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25444. *See also* NYSE Rule 440B.19 and Amex Rule 7.

[12] See SEC, Report of Special Study of Securities Markets (1963), reprinted in H.R. Doc. No. 95, 88th Cong., 1st Sess. 251 ("Special Study"); Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report"), reprinted in Fed. Sec. L. Rep. (CCH) No. 1271 Extra Edition (February 9, 1988) at 3–26.

[13] As originally adopted, Rule 10a–1 contained five exceptions. *See* Release 34–1548.

[14] As discussed *infra*, current paragraph (e)(12) would be redesignated as paragraph (h).

[15] The term "principal market" is defined in proposed Rule 3b–10 under the Exchange Act. *See* n. 22 *infra*.

[16] See Securities Exchange Act Release No. 27938 (April 23, 1990), 55 FR 17949 ("Release 34–27938"), commenting on the scope of the staff no-action position.

[17] See, *e.g.*, SEC, Policy Statement on Regulation of International Securities Markets, Securities Act Release No. 6807 (Nov. 14, 1988), 53 FR 46983 ("Policy Statement"); Internationalization of the Securities Markets, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987) ("Internationalization Report") at III–312.

[18] See Securities Exchange Act Release, No. 21958 (April 18, 1985), 50 FR 16302 ("Release 34–21958") (request for comments concerning the internationalization of the world's securities markets).

[19] See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (February 24, 1989) ("NYSE Petition"). The NYSE petition is included in File No. S7–13–92. The NYSE filed its petition pursuant to the Commission's Rules of Practice and Investigations which provide a procedure pursuant to Section 3(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), allowing any person to file a petition requesting that the Commission issue, amend, or

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amend Rule 10a-1 to incorporate a new exception to permit a short sale on the opening transaction on a national securities exchange to "equalize" the opening price in a foreign security with the last reported price of that security in its principal foreign market.[20]

The Commission is proposing to amend paragraph (e) of Rule 10a–1 to permit the equalization of the price of a foreign equity security [21] on a U.S. exchange with the last reported price in its principal market.[22] Proposed new exception (e)(12) would permit any market participant, at the opening of trading on a U.S. national securities exchange of a foreign security, or a depositary share or depositary receipt relating to such a security, to sell short such foreign security, depositary share, or depositary receipt at a price equal to or above the last reported price (taking into account current exchange rates [23] and the ratio of shares to ADRs) of that security on the principal foreign market for the security. The Commission preliminarily believes that, as in other contexts (and as expressed in the NYSE Petition), the appropriate reference price for an equalizing exception is the principal market for the security, because that market is most likely to reflect the current level of over-all supply and demand. Prices in other markets may be subject to greater fluctuations based upon low trading volume and continuity.

For purposes of illustrating the application of this proposed exception, assume that a foreign security trades in ADR form on the NYSE, with each ADR representing one share of the foreign security. Assume that the foreign security closed on its principal foreign exchange at the U.S. equivalent of $10 per share (taking into account currency exchange rates),[24] and that the last U.S. sale on the previous trading day occurred at 10½, on a minus tick. Absent relief, a U.S. specialist that did not have a net long position would not be able to sell the ADR at the opening at a price below 10⅝ without violating Rule 10a–1(a).[25] The proposed exception would enable the specialist (or other market participant) to sell the ADR at $10 or above, and thus to open the security at a price more closely related to the price in the principal market.[26] The exception would apply only to the opening transaction. Subsequent short sales would have to be effected in compliance with the tick provisions of the short sale rule.

The Commission solicits comment on the scope of proposed exception (e)(12). Comment is specifically requested on whether it would be preferable to limit the exception to registered specialists and registered exchange market makers,[27] and whether, in that case, exchange approval should be required for transactions utilizing the exception.[28]

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repeal a rule of general application. See 17 CFR 201.4(a).

The NYSE Petition also requested a separate staff interpretation that the opening trade on the NYSE of a security being distributed in an initial public offering ("IPO") be deemed to be on a "zero-minus" tick if the opening trade is below the offering price. The Amex has proposed a similar position. *See* Securities Exchange Act Release No. 28423 (September 10, 1990), 55 FR 38180 (File No. SR–Amex-90–13; notice of proposed rule change to Amex Rule 7 to the same effect as the NYSE Petition). No comments were received in response to the Amex filing.

The requested interpretation would reverse a prior Commission staff interpretation provided at the request of the NYSE that the first transaction of a security just admitted to trading on a national securities exchange could be a short sale. *See* SEC Staff Interpretive Letter to NYSE (July 20, 1955), [1952–56] Fed. Sec. L. Rep. (CCH) ¶76,355. The staff interpretation focuses on the fact that the Rule prohibits short sales only on minus or zero-minus ticks with reference to transactions reported on the consolidated tape or on the relevant exchange. The staff reasoned that, until there has been a transaction in a newly-listed security (*e.g.*, following an IPO), a "tick" cannot be determined. Once a trade occurs, the tick provisions of the Rule apply.

The staff preliminarily has determined not to reverse the interpretation because it believes that the position is consistent with the Rule, and that the possibility of short selling on the opening of trading acts as an appropriate market discipline on the pricing of IPOs. Moreover, underwriters may prevent a decline in the market price from the IPO price through stabilizing activity in compliance with Rule 10b–7 under the Exchange Act, 17 CFR 240.10b–7.

Commenters nevertheless are invited to address the NYSE and Amex positions. The NYSE letter is included both in File No. SR–NYSE–90–10 and in the file for this amendment (File No. S7–13–92).

[20] As described below, the Commission is proposing an amendment to Rule 10a–1 that differs in form but not in substance from the text of the NYSE proposal, in order to incorporate defined terms in the Exchange Act, and to reflect the stated objective in the NYSE Petition that the exception permit market participants to equalize the U.S. exchange price with the price on the *principal* (or primary) foreign market. The NYSE Petition also suggests that the price at the close of the foreign markets be used for purposes of the exception. The exception as proposed for comment refers to the last reported price in order to include situations where the primary market may still be open for trading when the relevant U.S. exchange opens.

[21] The Commission has proposed general definitions of certain terms under the Exchange Act to address the increasing internationalization of world securities markets rather than adopting identical definitions in the context of individual rulemaking proposals. *See* Securities Exchange Act Release No. 28733 (January 3, 1991), 56 FR 820 ("Release 34–28733").

A "depositary share" means "a security, evidenced by a depositary receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depositary." *Id.* A "foreign security" means "a security issued by a 'foreign government' or a 'foreign private issuer' as those terms are defined in Rule 3b–4 [17 CFR 240.3b–4]." *Id.*

Currently, paragraph (e)(12) of the Rule provides that "[f]or the purposes of paragraph (e)(8) of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt." 17 CFR 240.10a–1(e)(12). The Commission proposes to amend and to redesignate paragraph (e)(12) of the Rule as new paragraph (h) to reflect the definitional nature of that section. New paragraph (h) would provide that: "*(h) Definitions. (1) For the purposes of [paragraph (e)(8) of] this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt * * * " (deletions [bracketed], additions italicized).*

[22] Proposed Rule 3b–10 under the Exchange Act, defines "principal market" as "the single United States market or foreign securities market with the largest aggregate trading volume for the class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation." See Release 34–28733.

[23] As defined by proposed Rule 3b–10, "current exchange rate" means the "current rate of exchange between two currencies, which is obtained from at least one major independent commercial bank or independent foreign bank which regularly maintains currency exchange operations." *Id.*

[24] Proposed exception (e)(12) would permit a market participant to reflect the current exchange rate between the U.S. dollar and the currency in which the foreign security trades on its principal market.

[25] Because the last price in the consolidated system was on a minus tick at 10½, the specialist with a short position could only sell the ADR on an uptick, *i.e.*, at 10⅝ or above (assuming that ⅛ is the smallest trading differential, or tick).

[26] This international equalizing exception is designed to operate in much the same way as the regional equalizing exception. Exception (e)(6) of the Rule, 17 CFR 240.10a–1(e)(6), excepts transactions in a security covered by paragraph (b) of the Rule that equalize the price of a security on a regional exchange with its price in the principal U.S. exchange market for the security. Exception (e)(6) of the Rule effectively allows regional exchanges to keep their stock prices on a par with the prices on the NYSE. *See* Securities Exchange Act Release No. 1579 (February 10, 1938), 3 FR 382. Exception (e)(6) was last amended in Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25444.

Exception (e)(5) of the Rule, 17 CFR 240.10a–1(e)(5), functions, subject to certain conditions, as a regional equalizing exemption as well. The provision excepts short sales of a security covered by paragraph (a) of the Rule (*i.e.*, transactions in any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, where trades in such security are reported in the consolidated system) by regional exchange specialists and third market makers. Subparagraph (ii) of exception (e)(5) allows specialists and third market makers to honor their quotations that are equal to or above the last sale when communicated. As with exception (e)(6), an exchange may prohibit use of this equalizing exception by its registered specialists and market makers. To date, only the NYSE has done so. See NYSE Rule 440B.15. Exceptions (e)(5) and (e)(6) are critical to permit secondary market specialists to ensure that orders routed to their markets receive execution at least equal to the price in the principal market.

[27] To date, no market participants other than NYSE exchange specialists have expressed difficulties in the application of Rule 10a–1 at the opening of exchange trading in a foreign security.

[28] Perhaps approval should be required only for sales of paragraph (b) securities. *Cf.* paragraph (e)(6) of the Rule.

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In addition, the Commission seeks comment on whether the last reported price in the principal foreign market should also be the reference point for short sale rule compliance, rather than the NYSE's prior day closing price, when the price in such market has risen above the NYSE close.[29] Finally, the Commission seeks comment on whether the exception should be broadened, in cases where the principal foreign market for a security is closed, to allow equalizing with a subsequent price in other foreign markets [30]

From and after the date of this release until the Commission takes final action on proposed exception (e)(12), the staff of the Division will not recommend that the Commission take enforcement action under Rule 10a–1, if a short sale is effected at the opening on a U.S. exchange in a manner consistent with proposed exception (e)(12).

B. Exchange-Listed Corporate Bonds

The Commission is proposing an amendment to paragraph (b) of the Rule to exclude from its application transactions in corporate bonds listed and effected on an exchange. In a petition for rulemaking ("Amex Petition"), the Amex recommended that the Commission amend paragraph (b) of the Rule to exclude corporate bonds from short sale regulation.[31] The Amex noted that because bond prices generally are related to and move in tandem with interest rate changes, the potential for market manipulation is significantly reduced.[32] The Amex also noted that, while bond transactions on the Amex are reported to the Consolidated Tape Association, they are not reported on a consolidated basis with other markets.[33] The Amex reasoned that because the majority of corporate bond transactions occur in the OTC market, which does not have a short sale rule, there would be little realistic ability to effect a manipulation of the primary bond market through short sale transactions on an exchange.[34] The Amex also argued that the discrepancy between the OTC and the exchange markets has given rise to a competitive inequity between the two markets and suggested that such disparate regulatory treatment based upon the market in which the same security is traded is unwarranted.

Prior to 1974, Rule 10a–1, as a practical matter, did not apply to exchange transactions in bonds by virtue of the Rule's original exception for odd-lot transactions.[35] In eliminating the exception for the sale of odd-lots in 1974, the Commission did not address specifically the effect of that amendment upon the sale of exchange-listed bonds. Rather, the Commission acted on its conclusion that disparate treatment of odd-lots and round lots was not justified.[36] An apparently unintended consequence of eliminating the distinction between odd-lots and round lots was the extension of the short sale rule to cover exchange-traded corporate bonds.

The Commission previously has recognized differences between the exchange and the OTC markets for bonds. For example, in considering whether to include exchange-traded bonds within the scope of the proprietary trading restrictions of section 11(a) of the Exchange Act,[37] the Commission found that the OTC market handles the majority of bond trading, characterized by a predominance of large-scale, institutional transactions. Conversely, the exchange market handles a considerably smaller volume, with most trades being small-sized and executed on behalf of retail customers.[38] Exchange bond trading continues to be characterized by transactions in small size and small volume relative to OTC trading. For example, the average trade size in corporate bonds on the NYSE in 1991 was 20.2 bonds, and the par value of corporate bonds traded on the NYSE in 1991 was $12.7 billion.[39] The par value of corporate bonds traded on the AMEX in 1991 was $952 million.[40] In contrast, the average *daily market* value of institutional trading in the secondary corporate bond market was $23.3 billion in 1991.[41]

The Commission has preliminarily concluded that the application of Rule 10a–1 to bonds may impose an unnecessary regulatory burden on the exchange market because exchange trading of such bonds generally is not susceptible to the type of market abuse the short sale rule is designed to prevent.[42] Moreover, given the limited

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The Commission does not believe that it would be appropriate to permit equalizing short sales to be made into stabilizing bids complying with Rule 10b–7 of the Exchange Act, 17 CFR 240.10b–7. Accordingly, proposed exception (e)(12) would prohibit the use of the international equalizing exception for a short sale of a security into a stabilizing bid complying with Rule 10b–7 under the Exchange Act. Current exceptions (e)(5) and (e)(6) of the Rule have similar restrictions.

[29] This would, in effect, require the "tick" to be measured with respect to the foreign principal market rather than the close of trading on the U.S. exchange. For example, if the U.S. exchange closed at 10, and the principal foreign market then rose to 12, a market participant could not sell short below 12 at the opening of trading on a U.S. exchange.

[30] Commenters suggesting a broader scope should include market and timing criteria. Irrespective of the parameters of any exception that may be adopted, the Commission will continue to consider requests for relief from the Rule in appropriate circumstances.

[31] *See* Letters from Carrie E. Dwyer, Vice President and Associate General Counsel, Amex, to John Wheeler, Secretary, SEC (December 30, 1985 and January 22, 1986), and Letter from Scott I. Noah, Assistant Vice President and Associate General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC (November 22, 1989) ("Amex Letters"). The Amex Letters are included both in File No. SR–Amex–85–36 and in the file for this amendment (File No. S7–13–92). See also Securities Exchange Act Release No. 22620 (November 13, 1985), 50 FR 48286 (order granting accelerated approval of File No. SR–Amex–85–36).

[32] *See* January 22, 1986 Amex Letter, at 2. A bear raid is a form of market manipulation which occurs when short sales are made at successively lower prices in a concerted attempt to induce others to sell and to drive the price down to a level where covering purchases can be effected profitably. See 2 Special Study, *supra* n. 12, at 251.

[33] At this time, there does not exist any consolidated transaction reporting system for the corporate bond market. Transactions in NYSE-listed bonds are reported to the public on the NYSE bond tape; Amex transactions are reported pursuant to the Consolidated Tape. *See* n.10 *supra*. For OTC transactions in exchange-listed bonds, which constitute the majority of volume in these issues, there exists no mechanism for last sale reporting. Accordingly, transactions in exchange-traded bonds are subject to paragraph (b) of the Rule. As noted *supra*, paragraph (b) of the Rule applies only to transactions effected on a national securities exchange.

[34] *See* January 26, 1936 Amex Letter at 1. The Commission notes that the NASD has filed a proposed rule change that would implement a short sale rule employing a "bid test" for NASDAQ/NMS securities. The proposal would prohibit short sales at or below the inside bid when the current inside bid is lower than the preceding inside bid. See File No. SR–NASD–92–12 (April 9, 1992). It is not understood that any such rule would relate to OTC transactions in bonds.

[35] See Release 34–1548.

[36] See Securities Exchange Act Release No. 11030 (September 22, 1974), 39 FR 35570. The Commission extended exceptions permitting odd-lot dealers to sell short to offset customer odd-lot orders, and to liquidate an odd-lot by a single round lot sell order, to transactions by third market makers. *See* 17 CFR 240.10a–1(e) (3), (4), and (12). The term third market maker means "any dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size." 17 CFR 240.10a–1(e)(12). The provisions of current paragraph (e)(12) of the Rule are proposed to be redesignated as paragraph (h).

[37] 15 U.S.C. 78k(a).

[38] See Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557, 18558 [adopting Rule 11a1–4(T), 17 CFR 240.11a1–4(T)].

[39] NYSE Fact Book (1992) at 48.

[40] Amex Fact Book (1992) at 23.

[41] Securities Industry Association, Investor Activity Report (May 12, 1992).

[42] The Commission notes that conduct that artificially affects the price of securities may violate, e.g., Section 17(a) of the Securities Act, 15 U.S.C. 77q(a); Sections 9(a), 10(b), and 15(c)(1) of the Exchange Act, 15 U.S.C. 78i(a), 78j(b), and 78o(c)(1); and Exchange Act Rule 10b–5, 17 CFR 240.10b–5. *See In the Matter of Halsey, Stuart & Co., Inc.*, 30 S.E.C. 106 (1949); *In the Matter of Kidder Peabody & Co.*, 18 S.E.C. 559 (1945) (manipulation of bond prices on an exchange).

amount of bond trading effected on exchanges, there would appear to be little reason for concern over the effect of short selling of bonds on the exchanges.

Accordingly, the Commission is proposing to amend paragraph (b) of Rule 10a–1 by adding the phrase "except a bond or debenture" thereby excluding exchange transactions in all bonds or debentures from the Rule. [43] From and after the date of this release until the Commission takes final action on the proposed amendment to Rule 10a–1(b), the staff of the Division will not recommend that the Commission take enforcement action under Rule 10a–1 if short sales in exchange-listed bonds and debentures are effected without complying with the Rule.

C. Application of the Rule to Liquidation of Index Arbitrage Positions

Arbitrage typically involves the purchase or sale of one or more securities coupled with the near-simultaneous sale or purchase of the same or related securities in a different market in order to profit from any price difference between the markets. Arbitrage also may involve the purchase or sale of an economically equivalent instrument which, by its terms, entitles the holder to obtain the first security or its current market value in cash. The range of traded instruments that are economically equivalent has increased significantly and includes standardized put and call options on individual stocks and stock indices, and commodity futures contracts on stock indices. [44]

Index arbitrage involves the purchase or sale of a "basket" of all stocks comprising a securities index or a smaller number of stocks designed to track day-to-day price movement of an index, and a contemporaneous offsetting sale or purchase of one or more commodity futures or options on a future or standardized option contracts on that index in an attempt to profit from price discrepancies between the stocks and the derivative index products. [45] Index arbitrage often involves a liquidation (or "unwinding") transaction in order to realize arbitrage profits. Liquidation may consist of either simple elimination of each long or short stock position at expiration of the futures or option contract, or earlier termination of both the stock positions and the futures or option contract position.

Pursuant to Rule 3b–3 under the Exchange Act, [46] a seller of an equity security subject to Rule 10a–1 must aggregate all of the seller's positions in that security in order to determine whether the seller has a "net long position" in the security. [47] Additionally, Rule 10a–1(c) [48] provides that all sell orders effected by a person on a national securities exchange must be marked either "long" or "short." Therefore, if a person does not have a net long position in a security, any sale of that security must be designated as a short sale and must comply with the "uptick" provisions of Rule 10a–1. [49] If the transaction is subject to Rule 10a–1, a person liquidating an index arbitrage position involving a long basket of stock is often unable to sell all the securities contemporaneously with closing out the derivative instrument position because of the requirement to net short security positions in other proprietary accounts, even if those short positions are fully hedged. [50]

In 1986, [51] the Division took a limited no-action position under paragraphs (a) and (b) of Rule 10a–1 for sales of securities held as a part of an index arbitrage position relating to a securities index that is the subject of a financial futures (or options on such futures) contract traded on a board of trade, and/or a standardized options contract as defined in Rule 9b–1(a)(4) under the Exchange Act. [52] Specifically, pursuant to the no-action position, a security may be sold short without regard to paragraphs (a) and (b) of Rule 10a–1 if:

(1) The firm has a "long" stock position as part of an index arbitrage position;

(2) The stock is being sold in the course of "unwinding" an index arbitrage position; and

(3) The sale would be deemed to be a short sale as defined in Rule 3b–3 solely as a result of the netting of the index arbitrage long position with one or more short positions created in the course of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge activities as those terms

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[43] The Commission solicits comment on whether the terms "bond or debenture" are sufficiently precise and comprehensive for purposes of the proposed exception. Would it be preferable to incorporate a definition of "debt security" for purposes of the proposed exclusion? "Debt security" could be defined as "(1) a note, bond, debenture, or evidence of indebtedness, (2) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (3) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate."

Convertible bonds are defined as "equity securities" in the Exchange Act. Exchange Act Section 3(a)(11), 15 U.S.C. 78c(a)(11), defines the term "equity security" to include "any stock or similar security, or any security convertible, with or without consideration, into such a security, * * *" Short selling of convertible bonds (at least in the much larger OTC market) may have an impact on the price of related exchange-traded equity securities. See, *e.g.*, 4 Special Study, *supra* n. 12, at 24. Therefore, the Commission seeks comment on whether convertible bonds should remain subject to the Rule.

[44] See Market Break Report, *supra* n. 12, at 3–1.

[45] See, *e.g.*, NYSE Rule 80A, NYSE Guide (CCH) ¶2080A, which defines index arbitrage as follows: "Index arbitrage" means an arbitrage trading strategy involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts (collectively, "derivative index products") in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products. * * *

[46] 17 CFR 240.3b–3.

[47] See Release 34–27938, 55 FR at 17950 (aggregation must be based on a netting of securities positions in all proprietary accounts as determined at least once each trading day); Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119, 45120 (to determine whether a person has a "net long position" in a security, all accounts must be aggregated). See also Letter regarding Rules 3b–3, 10a–1, and 10b–4 and File Nos. SR–Amex–85–1 and TP 85–152 (December 10, 1986), and Letter regarding Rules 3b–3, 10a–1, and 10b–4 and File Nos. SR–NYSE–85–25 and TP 85–152 (December 10, 1986). Rules 3b–3 and 10a–1 "require a netting of security positions to determine whether a person is net short or long when effecting a sale of a security. [A] person and all affiliates of that person must net their positions to determine whether they have an aggregate net short or long position in the security." The Division's no-action positions permitted specialists and specialist affiliates, *inter alia*, to sell securities short in compliance with Rule 10a–1 without netting security positions between themselves (available December 12, 1986, on LEXIS, Fedsec library, Noact file).

[48] 17 CFR 240.10a–1(c).

[49] See Salomon Brothers Inc, Securities Exchange Act Release No. 26838 (May 25, 1989), [1989] Fed. Sec. L. Rep. (CCH) ¶84,416.

[50] See Letter from Andrew M. Klein, Esq., to Richard G. Ketchum, Director, Division (October 2, 1986) (available December 17, 1986, on LEXIS, Fedsec library, Noact file).

Rule 10a–1 presently provides short sale exceptions for *bona fide* arbitrage undertaken to profit from a current difference between a convertible security and the underlying common stock [17 CFR 240.10a–1(e)(7)]; between a security traded both in the U.S. and abroad [17 CFR 240.10a–1(e)(8)]; and for certain block positioning activities by broker-dealers who engage in both block positioning and arbitrage [17 CFR 240.10a–1(e)(13)]. Exception (e)(7) excepts short sales effected in *bona fide* domestic arbitrage transactions involving convertible, exchangeable and other rights to acquire the securities sold short, where such rights of acquisition were "originally attached to or represented by another security or [were] issued to all the holders of any such class of securities of the issuer." *See* Securities Exchange Act Release No. 1645 (April 8, 1938) [adopting current exception (e)(7)]. Because standardized options and futures do not fall within these categories, exception (e)(7) does not extend to index arbitrage transactions. Accordingly, unless otherwise excepted or exempted, index arbitrage transactions are fully subject to Rule 10a–1. The Commission solicits comment on whether exception (e)(7) should be amended to include *bona fide* arbitrage not currently within the scope of the exception.

[51] See Letter regarding Merrill Lynch, Pierce, Fenner & Smith, Inc. (December 17, 1986) ("1986 position"), published in Release 34–27938, 55 FR at 17950.

[52] 17 CFR 240.9b–1(a)(4).

are employed in Securities Exchange Act Release No. 15533.[53]

Accordingly, the no-action position permits market participants to liquidate (or "unwind") certain existing index arbitrage positions involving long baskets of stock and short index futures or options without aggregating short stock positions in other proprietary accounts if those short stock positions are fully hedged.[54] The Division took this position based on its view that the unwinding of an existing long index arbitrage position does not create a new short position, nor should any price decline resulting from the selling of the stock benefit the seller because its remaining positions are fully hedged.[55]

The Commission in 1990 published a staff clarification of the 1986 position to address misperceptions by market participants and the public and to address the scope of relief afforded.[56] Release 34–27938 made the following points:

1. The no-action position does not apply to the creation of an index arbitrage position. The no-action position is "strictly limited to the application of Rule 10a–1 to sales pursuant to 'unwinding' the index arbitrage positions described [therein]." Therefore, the position does not provide any relief from the "uptick" provisions of Rule 10a–1(a) and (b) when securities are sold to establish a short stock-long futures or options index arbitrage position.

2. The Release modifies the no-action position by limiting the no-action position to the liquidation of an index arbitrage position established in compliance with Rules 3b–3 and 10a–1 under the Exchange Act. Accordingly, the no-action position does not apply to the liquidation of an index arbitrage position that was established off-shore unless the holder of the index arbitrage long stock position purchased its securities from a seller that acted in compliance with Rules 3b–3 and 10a–1 or other comparable provision of foreign law.

3. The no-action position applies only where, in liquidating an index arbitrage position, action is taken to reverse both sides of the position as nearly simultaneously as practicable. In particular, although the no-action position refers to a "concurrent" unwinding, it is not intended to cover any situation where an avoidable delay in reversing one side results in "legging-out" of the position.

4. The no-action position provides relief from the aggregation requirements of Rule 3b–3 only with respect to securities positions that are the subject of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge positions.[57] Accordingly, where the seller seeks to liquidate an index arbitrage position and has one or more short positions in the component securities of the index that are not the subject of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge positions, the seller must aggregate those short positions with the index arbitrage positions that it seeks to liquidate.[58] Moreover, when selling securities from a proprietary account in a transaction not involving the liquidation of an index arbitrage position, the 1986 position does not provide any relief to market participants from the requirement to aggregate short positions established in index arbitrage transactions with such proprietary stock positions.

The Commission proposes, in a new paragraph (g) to be added to Rule 10a–1, to delete the condition imposed by numbered paragraph (2) of Release 34–27938, discussed above, and change the focus of the availability of the relief from the time and circumstances surrounding the establishment of the index arbitrage position[59] to the time the index arbitrage position is liquidated.[60] The Commission believes that paragraph (2) may result in unnecessary compliance and interpretive complexity. It appears that the intent of that no-action position can be achieved more efficiently by tying the availability of the relief to conditions that exist at the time that a person seeks to unwind an index arbitrage position

[53] In Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 ("Release 34–15533"), *bona fide* arbitrage is described as "an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing." 44 FR at 6089. Risk arbitrage is described as a transaction effected with a view to profit from the consummation of a merger, acquisition, tender offer or other similar transaction involving a recapitalization. *Id.* at 6090. The release states that the concept of a *bona fide* hedge is largely a matter of custom and practice but must involve long and short positions in related securities where one security is exercisable, convertible, or otherwise related by its terms to the other security, and substantially offsets the risk of that security. *Id.* Hedges that do not offset most or all of the risk (*i.e.*, that are not fully hedged), or are not composed of such securities, would not be *bona fide* for purposes of proposed new paragraph (g).

[54] The no-action position fundamentally is a limited relaxation of the requirement that a person selling a security aggregate all of his positions in that security to determine whether he has a net long position. See nn. 46 and 47 *supra* and accompanying text.

[55] Market Break Report, *supra* n.12, at 3–27. It does not appear that the availability of aggregation relief has been a significant factor in the timing or incidence of index arbitrage liquidations. *See also, e.g.*, Market Break Report at 3–26 ("[The Division does not] believe that the [1986] position providing for a narrow exemption from the Rule for certain bona fide arbitrage activity substantially contributed to price volatility during the market break.")

[56] Release 34–27938. See also Power, " 'Uptick' Rule Exemption Ticks Off Program-Trade Foes," Wall St. J., November 16, 1989, at C1. *Cf.* NYSE Information Memos 88–5 (March 10, 1988) and 88–13 (May 18, 1988).

[57] *Cf.* Release 34–15533.

[58] Release 34–27938 stated that, for purposes of this paragraph only, fully-hedged index arbitrage positions may be considered as "*bona fide* arbitrage" for aggregation purposes. See n.53 *supra*.

[59] Release 34–27938 focused on whether the index arbitrage position was established in compliance with Rules 3b–3 and 10a–1 or comparable provision of foreign law.

More recent exemption positions similarly refer to the point at which the index arbitrage position was established. *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (order approving File Nos. SR–NYSE–90–52 and SR–NYSE–90–53), and Letter regarding Operation of Off-Hours Trading Sessions by the NYSE (June 13, 1991) ("NYSE OHT Letter") [the no-action position regarding index arbitrage transactions expressed in Release 34–27938 does not apply to the "unwinding" of an index arbitrage position that was established during either OHT Session on a day when NYSE Rule 80A(c) was in effect at the close as a result of a decline in the Dow Jones Industrial Average Index ("DJIA") of at least 50 points from the previous day's close]; Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (order approving File No. SR–Amex–91–15), and Letter regarding Operation of Off-Hours Trading Sessions by the Amex (August 5, 1991) ("Amex OHT Letter") (same).

[60] The economic rationale for the no-action position and the proposed exception is closely analogous to that underlying exception (e)(13) of Rule 10a–1 concerning block positioning. See Securities Exchange Act Release No. 20230 (September 27, 1983), 48 FR 45119 ("Release 34–20230") [proposing exception (e)(13)]; Securities Exchange Act Release No. 20715 (March 6, 1984), 49 FR 9414 ("Release 34–20715") [adopting exception (e)(13)].

Block positioning is an activity engaged in by certain broker-dealers whereby a broker-dealer acts as principal in taking all or part of a block order placed with the broker-dealer by a customer in order to facilitate a transaction that might otherwise be difficult to effect in the ordinary course of floor trading. *Cf.* NYSE Rule 97.10. Exception (e)(13) enables a broker-dealer that establishes an "arbitrage" or "hedge" position in an arbitrage account, with a short position fully hedged or covered by an equivalent security, not to be handicapped by Rule 10a–1 in its block positioning activities in that security. Release 34–20230, 48 FR at 45120. In that release, the Commission noted that exception (e)(13) would be limited to circumstances where it would facilitate activity beneficial to the market and where manipulative incentives do not appear to exist.

Under exception (e)(13), in determining whether it is long or short for purposes of the "tick" provisions of the short sale rule, a broker-dealer selling a security acquired while acting in the capacity of a block positioner may disregard a proprietary short position in that security if and to the extent that such short position is the subject of one or more offsetting positions created in the course of *bona fide* arbitrage, risk arbitrage, or *bona fide* hedge activities. Release 34–20715, 49 FR at 9414. For purposes of the exception, the terms "block positioner," *bona fide* arbitrage," "risk arbitrage," and "*bona fide* hedge" are as used in Release 34–15533. *See* n. 53 *supra*. The Commission proposes to redesignate paragraph (e)(13) as paragraph (f).

rather than the conditions that existed at the time that the particular index arbitrage position was established.

Proposed new paragraph (g) and the present staff no-action position,[61] have the same intent and effect, namely, facilitating pricing efficiency while preserving the fundamental objectives of Rule 10a–1. Paragraph (g) focuses on the timing of the *liquidation* of *all* index arbitrage positions, rather than the timing or the circumstances of the *establishment* of *individual* index arbitrage positions, as is the case with the no-action position.[62] This shift of focus would relieve firms from the compliance burden of tracking different positions of fungible securities according to the timing or circumstances surrounding their acquisition.

Proposed new paragraph (g)(2) would provide that the limited relief from the "uptick" provisions of Rule 10a–1(a) and (b) in connection with the liquidation of an index arbitrage position is not available if the "unwinding" occurs during a period commencing at the time that the value of the DJIA has declined by 50 points or more from the previous day's closing value and terminating upon the establishment of the closing value of the DJIA on the next business day. If the market decline restriction is in effect, each individual security position of an index arbitrage position must be aggregated in the usual way with all of the seller's other positions (whether fully hedged or not) in that security to determine whether the seller has a net long position. If the seller does not have a net long position, then the sale must comply with Rule 10a–1.

Proposed paragraph (g)(2) substantially parallels the operation of NYSE Rule 80A(c).[63] The restrictions of paragraph (g)(2) would be invoked simultaneously with the triggering of NYSE Rule 80A(c), which is a well-publicized signal of a change in index arbitrage liquidation procedures. NYSE Rule 80A(c) provides in part that when the DJIA declines by 50 points or more from the previous day's close, all index arbitrage sales of securities on the NYSE may occur only on plus ticks or zero-plus ticks. The NYSE Rule 80A(c) execution procedures are more restrictive than paragraph (g)(2), however, in that they require all NYSE index arbitrage stock transactions, whether undertaken by a short or long seller, to be effected on a plus tick or zero plus tick.[64]

The most significant difference between the operation of these two provisions is that paragraph (g)(2) would continue to operate for a longer period of time than the provisions of NYSE Rule 80A(c), which terminate once the DJIA recovers 25 points from the NYSE Rule 80A(c) trigger level. In contrast, the operation of new paragraph (g)(2) of Rule 10a–1 would terminate upon the establishment of the closing value of the DJIA on the next succeeding trading day when NYSE Rule 80A(c) had not been triggered.[65] The reason for the longer application of proposed paragraph (g)(2) would be to allow the markets to avoid incremental selling pressure at the close of trading on a volatile trading day (even if NYSE Rule 80A is not in effect at the close of trading) and at the opening of trading on the following day, since trading activity at these times may have a substantial effect on the market's short-term direction.[66]

The Commission specifically requests comment on the appropriateness and scope of the proposed amendment, including experiences of market participants in complying with condition (2) of Release 34–27938.[67] The Commission also requests comment on whether the availability of the relief afforded by new paragraph (g) should coincide more closely with the operation of NYSE Rule 80A(c).

D. Proposed Amendment to Rule 3b–3

Rule 3b–3 defines the term "short sale" as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."[68] Rule 3b–3 further states that a person shall be deemed to own a security if "he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it."[69] The Commission is proposing to amend Rule 3b–3 to clarify that, if the ownership of a security is claimed by virtue of having entered into a contract to purchase it, the contract must involve a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price. The proposed amendment is designed to address potentially abusive trading practices.

The question of the price of shares owned for purposes of Rule 3b–3 and Rule 10a–1 arises, for example, when a customer contracts to sell to a broker-dealer shares of stock or a portfolio of stocks with the price agreed in advance to be the next following closing price on the primary market for the stock or stocks.[70] The broker-dealer may then sell the securities that are the subject of the contract prior to the close of trading on the primary market.[71] The Commission questions whether contracts for the purchase of a security that do not specify the purchase price should entitle the purchaser to be considered an owner of the shares for purposes of Rule 3b–3 because the purchaser may have an incentive to depress the market price of the security, and thereby obtain the shares pursuant to the contract at a lower price. This incentive appears to be the type of manipulative concern that Rule 10a–1 is designed to address. Accordingly, the Commission solicits comment on whether it would be appropriate to amend Rule 3b–3 to clarify that an "unconditional contract" must specify a fixed, currently ascertainable price.

The question of the quantity of shares owned for purposes of Rule 3b-3 and Rule 10a-1 has arisen in the context of certain issuer dividend reinvestment plans ("DRPs"). Under such plans, shareholders of record generally may purchase additional shares with cash dividends and with optional cash contributions (which may be substantial) directly from the issuer or in

[61] If proposed new paragraph (g) is adopted, the 1986 position and Release 34–27938, and the NYSE and Amex OHT Letters (in relevant part), would be withdrawn.

[62] The Commission notes that Release 34–27938 may have the unintended effect of penalizing buy-side index arbitrage strategies involving the purchase of stocks in times of market stress.

[63] *See* NYSE Guide (CCH) ¶2080A(c). See also Securities Exchange Act Release No. 29854 (Oct. 30, 1991), 56 FR 55963 (File No. SR–NYSE–91–21).

[64] The Commission notes, however, that NYSE Rule 80A covers only NYSE-listed stocks, while Rule 10a–1 and proposed paragraph (g)(2) apply to a larger universe of securities.

[65] Therefore, if the DJIA declined on the next trading day (day 2) by 50 or more points from its close on the initial trading day (day 1), NYSE Rule 80A(c) would be triggered on day 2 and the paragraph (g)(2) restrictions would apply on day 2 and until the close of the next trading day (day 3). The application of NYSE Rule 80A(c) would terminate at the end of day 2 (if it had not earlier terminated by a 25 point recovery in the DJIA from the NYSE Rule 80A(c) trigger level).

[66] As discussed above, the operation of paragraph (g)(2) does not preclude short sales of securities held in an index arbitrage position. The effect of paragraph (g)(2) is to require such sales to comply with the "tick" provisions of Rule 10a–1.

[67] Among other issues, commenters are invited to address whether the definitions of *bona fide* arbitrage, *bona fide* hedge, and, particularly, risk arbitrage, as defined in Release 34–15533, are appropriate in this context. See n.53 *supra*.

[68] 17 CFR 240.3b–3.

[69] 17 CFR 240.3b–3 [subparagraph (b)].

[70] For example, a customer, generally an institutional investor, managing an indexed portfolio may desire to obtain the closing prices in order that the performance of the portfolio more precisely tracks that of the index.

[71] The Commission notes that some broker-dealers may consider themselves long by virtue of having entered into such a contract, while others may consider themselves short. The proposed amendment to Rule 3b— is intended to resolve this interpretive question.

market transactions at the closing price of the issuer's stock as of a particular date, or based upon an average price formula ("Formula Price").[72] Certain DRPs also provide for the purchase of shares at a discount (usually from 2 to 5 percent) from the closing price or Formula Price.

In recent years, some trading strategies have developed to take advantage of these discounts. For example, on or about the day or days involved in calculating the price for the DRP shares, a broker-dealer will sell in the market the estimated amount of shares that the broker-dealer and/or its customers expect to purchase through the DRP. The broker-dealer may estimate this amount by dividing the amount of the optional cash contributions sent to the DRP agent by the expected Formula Price less the discount. In this way, the DRP participant can capture as gross profit the discount provided by the plan. Sales pursuant to strategies designed to capture the discount, however, also have the inherent potential for lowering the price of the security.[73] If the Formula Price is driven below the average price realized on the shares sold in the market, the DRP participant will capture the amount of this difference in addition to the plan's discount.[74] Of course, to the extent that such sales induce other persons to sell and lower the market price further, the opportunity for profit by the DRP participant increases.

Some of these persons may consider the shares expected to be received pursuant to the DRP to be "owned" for purposes of Rules 3b-3, so that their sales of those shares may be effected as "long" sales for purposes of Rule 10a-1. The apparent basis for this position is that the Plan participants, upon deposit of their funds for the purchase of shares by the Plan administrator, deem themselves to have "an unconditional contract, binding on both parties thereto, to purchase it but [have] not yet received it."

The Commission questions whether it is appropriate for a person to be considered the owner of a security for purposes of Rules 3b-3 and 10a-1 where the person can only estimate the number of shares that the person will receive pursuant to a contract or otherwise.[75] In order to make clear that sales by DRP participants of the shares expected to be received through the DRP under the circumstances described above are not within the definition of ownership (and thus must be sold "short"), the Commission solicits comment on whether it should amend Rule 3b-3 to provide that ownership must be based upon a specific amount of such security at the time of sale. If so, a person will be deemed to own a security for purposes of Rule 3b-3 only where the exact amount of securities owned is known at the time of sale.[76]

Therefore, the Commission proposes to add a proviso to Rule 3b–3 that a person would be deemed to own a security for short sale purposes where ownership is claimed by virtue of having a contract to purchase it only where the contract specifies a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price.[77]

The Commission seeks comment on whether this amendment is necessary or appropriate, and whether the definitional change would affect adversely the important liquidity function provided by broker-dealer capital commitments to customer facilitation operations or trading strategies not related to DRPs.[78] The Commission is particularly interested in possible alternative approaches which may address the identified concerns.

III. Regulatory Flexibility Act Considerations

Section 603(a) [79] of the Administrative Procedure Act ("APA"),[80] as amended by the Regulatory Flexibility Act ("Flexibility Act"),[81] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." Section 605(b) of the Flexibility Act specifically exempts from this requirement any proposed rule, or proposed rule amendment, which, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a significant economic impact on a substantial number of small entities.[82] The Chairman of the Commission has certified pursuant to that Act that the proposed amendments to Rules 10a–1 and 3b–3, if adopted, will not have a significant economic impact on a substantial number of small entities. The certification is attached to this release as Exhibit A. The amendments to Rule 10a–1 would provide for an exemption to equalize the price of a foreign security on a exchange with its price in the principal foreign market for the security; provide for an exemption for certain

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[72] Similar to the activities described above, the question of the price of shares owned for purposes of Rule 3b-3 and Rule 10a-1 is also relevant to certain DRPs transactions.

[73] See n. 42 *supra*.

[74] The Commission observes that this practice is analogous to the short selling and covering in connection with registered public offerings that is prohibited by Rule 10b-21(T) under the Exchange Act, 17 CFR 240.10b-21(T).

[75] Irrespective of whether a DRP participant can be considered to have a qualifying contract to purchase securities, where a DRP participant sells securities in anticipation of receipt of DRP securities and delivers borrowed shares to effect delivery on those sales, the sale is a short sale. *See* Rule 3b-3.

[76] See Letter regarding RFG Options Co. (December 19, 1985) ("RFG Options letter") (available January 21, 1986, on LEXIS, Fedsec library, Noact file). See also Letter from Larry E. Bergmann, Assistant Director, Division, to Michael Seely, Manager, Market Trading Analysis, NYSE, (February 19, 1985) (available on LEXIS, Fedsec library, Noact file). In the RFG Options letter, the Division adhered to the above analysis of Rule 3b-3, but nevertheless took a no-action position with respect to Rule 10a-1 under the Exchange Act to permit RFG Options Company to continue to participate in certain DRP plans. The RFG Options letter would be modified to the extent that the Commission adopts the proposed amendment to Rule 3b-3.

Of course, without considering any securities expected to be received from the DRP purchases, a DRP participant with a net long position in the security (without considering the shares that are the subject of a contract of the type discussed above) may sell long based upon that ownership.

[77] Accordingly, securities that are to be acquired pursuant to a contract without such specificity would not be considered to represent a "long" position for purposes of determining the person's net position under Rule 3b–3.

[78] The Commission understands that in connection with partial exchange offers, the NYSE permits tendering security holders to sell securities they anticipate receiving in the exchange offer as "long," provided that the tendering security holder tenders (and does not withdraw) all its securities into the exchange offer. The amount of shares to be sold long is based upon a "conservative" calculation of the amount of shares anticipated to be received in the partial exchange offer. For example, a tendering holder who tenders (and does not withdraw) all its securities into an exchange offer for 80 percent of the outstanding securities may conservatively estimate that at least 80 percent of its tendered securities will be accepted, and may sell the shares expected to be received in the exchange "long" after the expiration of the tender period but prior to the announcement of the proration factor, if any.

The NYSE's practice is based on Rule 3b–3(c), 17 CFR 240.3b-3, which states that a person is deemed to own a security if "he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange." *See also* NYSE Rule 440B.14. The Commission requests comment on the appropriateness of the NYSE view.

[79] 5 U.S.C. 603(a).

[80] 5 U.S.C. 551 *et seq.*

[81] Public Law No. 96–354 (September 19, 1980), 94 Stat. 1164 (1980), U. S. Code Cong. & Ad. News 1169.

[82] Although Section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215.

liquidations of existing index arbitrage positions; and exclude from short sale restrictions transactions in non-convertible corporate bonds effected on an exchange. The proposed amendments to the Rule would restructure and redesignate certain exceptions to the Rule. The amendment to Rule 3b–3 would alter the definition of ownership of a security pursuant to contract. These provisions of the amendment would clarify Rules 3b–3 and 10a–1, and therefore will not result in any adverse economic impact to small entities.

IV. Statutory Basis and Text of Rule Amendments

The proposed amendments to Rule 3b–3 and Rule 10a–1 would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3(b), 10(a), 10(b), 15(c), and 23(a); 15 U.S.C. 78b, 78c(b), 78j(a), 78j(b), 78o(c), and 78w(a).

List of Subjects in 17 CFR Part 240

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

Note—Arrows indicate text proposed to be added. Brackets indicate text proposed to be removed.

2. Section 240.3b–3 is revised to read as follows:

§ 240.3b-3 Definition of "short sale."

The term "short sale" means any sale of a security which the seller does not own or any sale which is consummated by the delivery of security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if:

(a) He or his agent has the title to it; or

(b) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or

(c) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(d) he has an option to purchase or acquire it and has exercised such option; or

(e) he has rights or warrants to subscribe to it and exercised such rights or warrants:

Provided, however, That >ownership based upon paragraphs (a) through (e) of this section is established only where such person or his agent has, or will receive, a fixed, currently ascertainable amount of the security at a fixed, currently ascertainable price, and Provided further, that< a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

3. Section 240.10a–1 is amended by revising paragraph (b); by redesignating paragraphs (e)(12), (e)(13), and (f) as paragraphs (h), (f), and (i), respectively; revising newly designated paragraphs (f) and (h); and adding new paragraphs (e)(12) and (g) to read as follows.

§ 240.10a-1 Short sales.

* * * * *

(b) No person shall, for his own account or for the account of any other person, effect on a national securities exchange a short sale of any security>, except a bond or debenture,< not covered by paragraph (a) of this section:

(1) below the price at which the last sale thereof, regular way, was effected on such exchange; or

(2) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange.

In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the "ex" date may be reduced by the value of such distribution.

* * * * *

(e) * * *

>(12) Any sale of a security (except a sale to a stabilizing bid complying with § 240.10b-7) at the opening of trading on a national securities exchange of a foreign security, or a depositary share or depositary receipt relating to such a security, at a price equal to or above the last reported price (adjusted for current exchange rate) of that security in the principal foreign market for the security;<

[(e)(13)] >(f) For purposes of this section, a broker-dealer that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of § 240.3b–3 (Rule 3b–3) and of this section notwithstanding that such broker-dealer may not have a net long position in such security if and to the extent that such broker-dealer's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.<

>(g) This section shall not apply to any sale of a security by a person, for that person's own account, effected in connection with the liquidation in a manner as nearly simultaneously as practicable of both sides of an index arbitrage position relating to a securities index that is the subject of a financial futures (or options on such futures) contract traded on a contract market designated by the Commodity Futures Trading Commission, or a standardized options contract as defined in § 240.9b–1(a)(4) [Rule 9b–1(a)(4)], or stock index warrants traded on a national securities exchange, notwithstanding that such person may not have a net long position in that security, Provided, however, That:

(1) such person's net short position is solely the result of one or more short positions created and maintained in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities; and

(2) the sale does not occur during a period commencing at the time that the Dow Jones Industrial Average ("DJIA") has declined by 50 points or more from its closing value on the previous day and terminating upon the establishment of the closing value of the DJIA on the next succeeding trading day during which the DJIA has not declined by 50 points or more from its closing value on the previous day.<

[(12)] >(h) Definitions.<

>(1)< For the purposes of [paragraph (e)(8) of] this section, a depositary receipt of a security shall be deemed to be the same security represented by such receipt.

>(2)< For the purposes of paragraphs (e)(3), (4) and (5) of this section, the term "third market maker" shall mean any broker or dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

By the Commission.
Dated: June 3, 1992.

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to

Rules 3b–3 and 10a–1 under the Securities Exchange Act of 1934 set forth in Securities Exchange Act Release No. 30772, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (i) the proposed amendments to Rule 10a-1, if adopted, would provide regulatory relief to a variety of market participants in a variety of recurring contexts; and (ii) to the extent that the proposed amendments to Rules 3b–3 and 10a–1, if adopted, would impose any costs on market participants, those costs are not significant and would not impact a substantial number of small entities.

June 3, 1992

Richard C. Breeden,

Chairman.

[FR Doc. 92–13465 Filed 6–8–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R–92–1582; FR–3131–P–01]

RIN No. 2502–AF61

Electronic Payment of Up-Front Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes that all Up-front Mortgage Insurance Premium (MIP) collections in accordance with 24 CFR 203.284 (see 56 FR 24622, 24625, May 30, 1990) be made by the Automated Clearing House (ACH) program. The purpose of this rule is to improve the efficiency of the single family mortgage insurance program and reduce costs to HUD lenders.

DATES: Comment due date: August 10, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. An original and four copies of comments should be provided. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Tucker, Acting Director, Single Family Insurance Operations Division, room 2246, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone: voice, (202) 708–2438. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In August 1985, the Department of Housing and Urban Development (HUD) implemented the Automated Clearing House (ACH) program for the remittance of Up-front Mortgage Insurance Premiums. The ACH program is designed to provide FHA approved lenders the opportunity to utilize their mainframe and personal computers to authorize electronically the payment of Up-front Mortgage Insurance Premiums, instead of sending checks and HUD–27001 forms by mail. Currently, more than 32 percent of HUD's up-front premiums are being collected through the ACH program.

The ACH system is designed to process Up-front premium collections from mortgagees and remit confirmations back to mortgagees, using remote terminals in lieu of sending checks and confirmations by mail. The mortgagee's terminal operator dials a number that ties the terminal or micro computer into the collection agent's telenet system. After keying the logon commands, the operator enters the day's transactions.

Each day at 8 p.m. EST, the collecting agent originates an ACH file of debit transactions based on the data keyed by the mortgagee. When the debit transactions have been processed, the ACH will transmit the up-front premium data to HUD's premium collection system. Through this ACH process, the debit amount is drawn from the designated lender's bank account electronically the next day, or can be "warehoused" and drawn on the lender's bank account on a future date. The corresponding credit entry will update HUD's account located at the collecting agent. If the lender's bank is unable to receive an ACH entry, a paper Depository Transfer Check (DTC) is used.

After transmission, the Up-front Premium transactions are processed in the same manner as in the past. The premium transactions are edited; then, using the results of the edit, appropriate letters are sent to the mortgagee via Electronic Mail (ECOM). The possible letters that can be sent are:

—Endorsement Authorization, or

—Bill for Late Charges, or

—Request for Additional Information.

The request for additional information results from edits on the HUD–27001 data. Correct remittance confirmation data is required to allow the system to calculate an amount of mortgage based on the premium paid. Without this data, the MIP amount cannot be calculated and an Endorsement Authorization to endorse the loan cannot be made.

There are other problems that cause delays in production of Endorsement Authorization letters:

- Late charges and/or interest charges are due.
- Incorrect mortgagee numbers.
- Additional information is needed.

Without ACH, these conditions had to be corrected by HUD personnel and the correction transaction prepared, keyed and then reprocessed by the HUD system. The ACH transfer system eliminates these errors. The ACH transfer system uses the mortgagee number as part of the logon procedure. Any error in the mortgagee number results in the ACH transfer system rejecting the logon attempt. In addition, the ACH transfer system balances the dollar fields in each detail transaction to the amount entered, along with the unit number. Where there is an error, the system produces an error message that describes the problem. The error must be corrected before the ACH transfer system will prepare the ACH entries.

The general Late Charge policy for the ACH program is the same as for Up-front Premiums sent to the Atlanta lockbox address. Late charges are levied if payment is received later than 15 days after the closing date. For the ACH program, the late charge amount is automatically calculated by the system.

ACH provides lenders with numerous tangible benefits that should reduce their servicing costs. The advantages of ACH are:

(1) Control of payment timing—The use of ACH debits and credits can increase control of payment initiation and funds availability.

(2) Banking costs are reduced—ACH transfer costs less than paper check and wire transfer.

(3) Accounting reconciliation is reduced—Payments are computerized and cash application is more automated than with manual systems.

(4) On-line edits can reduce data errors created by manual recording.

(5) The chance of lost/late mail is eliminated.

(6) ACH permits utilization of the new capability of submitting refinanced cases.

Because ACH provides mortgage lenders as well as the Department with numerous tangible benefits that reduce servicing costs, the Department is proposing that ACH become the sole method for collecting Up-front Mortgage Insurance Premiums. The Department feels that this rule does not have a significant economical impact on the smaller lending community since personal computing is so pervasive within the industry. The rule implements a program that will enhance operations and be cost beneficial for all mortgage lenders. Implementation of this process will be phased in and coordinated with lenders on an individual basis.

Up-front MIP's to be collected by the ACH program would be for mortgages insured under the Mutual Mortgage Insurance Fund, *i.e.*, National Housing Act Sections 203(b), 203(h), 203(i), and 203(n). (This includes mortgages insured under section 203(b) pursuant to sections 244 (coinsurance), 245 (graduated payment mortgages and growing equity mortgages) or 251 (adjustable rate mortgages).)

This rule does not affect the collection of monthly mortgage premiums. The Department does anticipate proposing at a future date collecting monthly premium payments in accordance with 24 CFR 203.284, solely by means of ACH. The Department invites interested persons to submit comments regarding this future proposal.

Also excluded are any section 203(b) mortgages insured pursuant to section 223(e) (older declining areas), 238(c) (military impacted areas), 248 (Indian reservations), and 247 (Hawaiian home lands), since those mortgages are not obligations of the Mutual Mortgage Insurance Fund.

The Department does anticipate proposing at a future date collecting monthly premium payments in accordance with 24 CFR 203.284, solely by means of ACH. The Department invites interested persons to submit comments regarding this future proposal.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a program that will enhance operations and be cost beneficial for all mortgage lenders. In addition, the plan to phase in the program with lenders on an individual basis assures that small organizations will not be put under undue burdens in adapting to it.

Under HUD's National Environmental Policy Act regulations at 24 CFR 50.20(k), this rule is exempt from the requirement of an environmental finding. The rule relates solely to internal administrative procedures whose content does not involve a developmental decision or affect the physical condition of project areas or building sites, but only relates to the performance of accounting, auditing and fiscal functions.

This rule was listed as item number 1144 in the Department's Seminannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16824) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, had determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves only technical and procedural specifications associated with the payment of premiums on FHA insured mortgages.

The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.112, 14.121, 14.122, 14.132, and 14.133.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands loan programs: housing and community development, Mortgage insurance, Reporting and record keeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR parts 203 and 204 are proposed to be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 would be revised to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d). Subpart C is also issued under 12 U.S.C. 1715u.

2. In § 203.259a, paragraph (b) would be revised to read as follows:

§ 203.259a Scope.

* * * * *

(b) The Commissioner will charge an Up-front MIP pursuant to § 203.284 for mortgages, executed on or after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund. The Commissioner may require, by means of instructions communicated to all affected mortgagees, that Up-front MIP be remitted electronically.

* * * * *

PART 204—COINSURANCE

3. The authority citation for part 204 would be revised to read as follows:

Authority: 12 U.S.C. 1715z –9, 1715b; 42 U.S.C. 3535(d).

4. Section 204.260 would be revised to read as follows:

§ 204.260 Mortgage insurance premiums for coinsured mortgages.

The provisions of § § 203.260 through 203.268, or the provisions of § § 203.284 and 203.259a(b) of this chapter, as appropriate, concerning mortgage insurance premiums with respect to mortgages insured under section 203(b)

of the National Housing Act, apply to mortgages covering one-to-four family dwellings to be insured under this part.

Dated: May 22, 1992.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-13514 Filed 6-8-92; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-88-86

RIN 1545-AJ35

Real Estate Mortgage Investment Conduits; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that relate to the real estate mortgage investment conduits, or REMICs.

DATES: The public hearing originally scheduled for Wednesday, June 17, 1992, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or 202-566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 860A and 860G of the Internal Revenue Code of 1986. A notice of public hearing appearing in the **Federal Register** for Monday, April 20, 1992 (57 FR 14371), announced that the public hearing on the proposed regulations would be held on Wednesday, June 17, 1992, beginning at 10 a.m., in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Thursday, June 17, 1992, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-13413 Filed 6-8-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-264-82]

RIN 1545-AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to adjustments to the basis of a shareholder's stock in an S corporation to a shareholder as well as proposed regulations relating to the treatment of distributions by an S corporation to its shareholders.

DATES: The public hearing will be held on Monday, September 14, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, August 24, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-264-82], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9232, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1367 and 1368 of the Internal Revenue Code. These regulations appear in the proposed rules section of this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, August 24, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the person testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-13414 Filed 6-8-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-264-82]

RIN 1545-AE88

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1367 of the Internal Revenue Code relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of indebtedness of an S corporation to a shareholder. This document also contains proposed regulations under section 1368 of the Internal Revenue Code relating to the treatment of distributions by an S corporation to its shareholders. Changes to the applicable law were made by the subchapter S Revision Act of 1982, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The proposed regulations affect S corporations and their shareholders and are necessary to provide them with the guidance they need to comply with the applicable tax law.

DATES: Written comments, requests to appear and outlines of oral comments to be presented at a public hearing scheduled for September 14, 1992 at 10 a.m. must be received by August 24, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (PS–264–82), room 5228, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Michael Slaughter, Regulations Unit, (202) 377–9232 (not a toll-free number); concerning a particular regulation section, Christine Ellison, (202) 377–3352 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Informaiton and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of Information in these proposed regulations are in § 1.1368–1 (f) and (g). This information is required by the Internal Revenue Service to assure that section 1368 and the regulations thereunder are properly applied to distributions made by the corporation. This information will be used to verify that a taxpayer is reporting the correct amount of income or gain on a distribution made by the corporation. The respondents will be S corporations and shareholders of S corporations.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting and recordkeeping burden: 18 hours.

Estimated average annual burden hours per respondent and recordkeeper varies from .05 to .2 hours, depending on individual circumstances, with an estimated average of .1 hours.

Estimated number of respondents and recordkeepers: 200.

Estimated annual frequency of response: On occasion.

Background

This document proposes amendments to part 1 of title 26 of the Code of Federal Regulations that provide rules under sections 1367 and 1368 of the Internal Revenue Code of 1986, as amended (the Code). The proposed amendments would conform the regulations to amendments made to sections 1367 and 1368 by sections 2 and 6 of the Subchapter S Revision Act of 1982, section 305 of the Technical Corrections Act of 1982, sections 721 (d), (r) and (w) and 722(e)(2) of the Tax Reform Act of 9184, and section 1879(m)(1)(B) of the Tax Reform Act of 1986.

Explanation of Provisons

Adjustments to Basis of Stock and Indebtedness

In General

The basis of a shareholder's stock in an S corporation and of the S corporation's indebtedness to a shareholder (S corporation debt) is relevant for determining (1) the amount of the shareholder's gain, loss, or tax-free return of capital on the disposition of stock or indebtedness and (2) the limitation on the deductibility of losses and deductions passed through from the corporation to the shareholder under section 1366 of the Code. The basis of a shareholder's stock in an S corporation also is relevant for determining the tax effect of distributions made by the corporation to the shareholder. Section 1367 provides special rules for adjusting the basis of a shareholder's stock and S corporation debt to take into account the shareholder's share of the corporation's income, losses, and deductions, and distributions made by the corporation to the shareholder. The proposed regulations implement these special rules.

Provisions of the Code other than those found in subchapter S also may affect the determination of the basis of a shareholder's stock or S corporation debt. For example, the original basis of a shareholder's stock or S corporation debt is determined under the rules contained in section 1012 or under other provisions of the Code. Adjustments to the basis of a shareholder's stock or S corporation debt may be required if, for example, the shareholder makes a contribution to the capital of the corporation, or receives a repayment of principal on the debt of the corporation. The proposed regulations address only the adjustments required by section 1367.

The Service adopts a separate basis approach (comparable to the basis of a shareholder in C corporation stock) in these regulations. The Service invites comments on whether another approach such as an aggregate/average basis (comparable to the basis of a partner in a partnership interest) should be used for purposes of sections 1367, 1368, and 1012. Comments advocating an aggregate/average basis should address how a shareholder would determine his or her holding period when disposing of stock.

Adjustments to Basis of Stock

Sectio 1367 (a) and the proposed regulations prescribe adjustments required by subchapter S to the basis of a shareholder's stock and the manner in which those adjustments are made. The basis of a shareholder's stock is increased by the shareholder's pro rata share (determined on a per share, per day basis under section 1377(a)) of (1) the corporation's separately stated items of income, (2) the corporation's nonseparately computed income, and (3) the excess of the corporation's deductions for depletion (other than depletion for any oil and gas) over the basis of the property subject to depletion. The basis of shareholder's stock is not increased for any depletion with respect to oil and gas property because each shareholder computes that deduction separately pursuant to section 613A(c)(11)(B). A shareholder increases stock basis for items of income that are required to be included in gross income only if the shareholer in fact includes the items in gross income on the shareholder's return.

Under the proposed regulations, the basis of a shareholder's stock is decreased (but not below zero) by (1) distributions that are not includible in the shareholder's income under section 1368, (2) the shareholder's pro rata share of separately computed items of loss and deduction, nonseparately computed loss, and any expense of the corporation that is not deductible in computing its taxable income and not properly chargeable to a capital account (noncapital, nondeductible expenses), and (3) deductions for depletion for any oil and gas property to the extent the deduction does not exceed the portion of the adjusted basis of that property allocated to the shareholder under section 613A(c)(11)(B). The basis of a shareholder's stock is decreased by the amount of any loss or deduction that is allowed for the taxable year under section 1366(d), regardless of whether the loss or deduction is disallowed or deferred under another provision of the

Code, such as the passive loss rules of section 469.

The adjustments to basis required for the shareholder's pro rata share of the corporation's items of income, loss, or reduction are made to each share of stock on a per share, per day basis under the principles of section 1377(a). If the amount of the loss or deduction attributable to a share exceeds its basis, the excess is applied to reduce (but not below zero) the remaining bases of all other shares of stock owned by the shareholder in proportion to the remaining basis of each of those shares.

Under the proposed regulations, adjustments are made to the basis of a share of stock in the following order: (1) Increases for income items and the excess of the deductions for depletion, (2) decreases for nondeductible, noncapital expenses and certain oil and gas depletion deductions, (3) decreases for items of loss or deduction, and (4) decreases for distributions. The Service invites comments on these ordering rules and suggestions for alternatives to the rules proposed here.

Adjustments to Basis of Indebtedness: Reduction and Restoration

Under section 1366(d)(1), a shareholder whose stock basis has been reduced to zero may take into account losses and deductions (but not distributions) allocated to the shareholder to the extent of the shareholder's basis in S corporation debt. Under the proposed regulations, if the amount of the items that decrease the basis of a shareholder's stock (other than distributions) exceed the basis of all the shareholder's shares of stock (after adjustment for items that increase stock basis), the excess is applied to reduce (but not below zero) the shareholder's basis of any S corporation debt. The reduction of basis of S corporation debt generally applies only to those debts held by the shareholder at the end of the corporation's taxable year and does not apply to debts satisfied, disposed of, or forgiven during the taxable year. If the shareholder holds more than one debt at the end of the corporation's taxable year, the reduction of basis applies to each debt in the same portion that the basis of each debt bears to the aggregate bases of all S corporation debt.

The proposed regulations provide that if for any taxable year there has been a reduction of the shareholder's basis of an S corporation debt, any net increase for any subsequent taxable year must be used to restore the basis of the debt before it may be used to increase the basis of the shareholder's stock. The net increase is the amount by which the sum of the shareholder's items of income and excess deductions for depletion exceeds the sum of the items of loss, deduction, nondeductible noncapital expenses, distributions, and certain oil and gas depletion deductions. The basis restoration rules apply to S corporation debt held by the shareholder on the first day of the taxable year in which the net increase arises, and the basis restoration is limited to the outstanding balance of the S corporation debt as of that day. In addition, if the shareholder holds more than one S corporation debt during the corporation's taxable year, any net increase is applied first to restore the reduction of basis of any debt repaid in whole or in part during that taxable year. In the case of a debt that is repaid in part during the corporation's taxable year, the basis is retored only to the extent necessary to offset any gain that would otherwise be realized on repayment. The remaining net increase, if any, is applied to restore the basis of each outstanding debt in proportion to the amount that the basis of each debt has been reduced under the basis reduction rules of section 1367(b)(2)(A), and the proposed regulations and not restored.

The proposed regulations do not address the treatment of indebtedness where the advances to the S corporation by a shareholder and repayments on these advances are treated as one account by the S corporation (open account debt). The Service invites comments regarding the proper treatment of open account debt for purposes of reducing and restoring basis in indebtedness. In particular, the Service invites comments as to whether it is appropriate to treat each advance as a separate debt or all advances as a single debt.

Timing Rules for Adjustments to Basis of Stock and Debt

The proposed regulations provide that adjustments to a shareholder's basis of stock and debt are determined as of the close of the corporation's taxable year. If a shareholder disposes of stock during the taxable year, however, the basis adjustments with respect to that stock are effective immediately prior to the disposition. If a share holder ceases to be a shareholder of the corporation, the adjustments to basis of S corporation debt are effective immediately prior to the termination of the shareholder's interest in the corporation. If a debt is repaid in whole or in part during the taxable year, any restoration of basis with respect to that debt is effective immediately before the first payment on the debt is made during the year.

If the corporation makes the election under section 1377(a)(2) (to terminate the S corporation's taxable year when the shareholder terminates his or her interest in the corporation) or the election under § 1.1368–2(b)(2) (to terminate the S corporation's taxable year when a shareholder disposes of substantial amounts of stock), the basis adjustment rules apply as if the taxable year consists of separate taxable years, the first of which ends on the date on which the shareholder terminates his or her interest in the corporation or disposes of a substantial amount of stock.

Distributions By S Corporations

In General

Under the provisions of the Subchapter S Revision Act of 1982, an S corporation does not generate earnings and profits for taxable years beginning after 1982. Instead, the balance of the S corporation's accumulated adjustments account (AAA) generally represents the post-1982 undistributed net earnings of the corporation. Distributions of amounts represented by the AAA are not treated as distributions made from the earnings and profits of the corporation and therefore are not taxed as dividends to the shareholder. An S corporation may nevertheless have earnings and profits, either from years in which the corporation was taxable under subchapter C of the Code (a C corporation) or from years before 1983 in which the corporation was an S corporation (subchapter S earnings and profits). Distributions of these earnings and profits are taxed as dividends to the shareholder.

Section 1368 and the proposed regulations provide rules for determining the source of a distribution made by an S corporation with respect to its stock and the tax effect of the distribution on the shareholders. One set of rules governs distributions made by S corporations with no earnings and profits at the close of the taxable year of the corporation, and another governs distributions made by S corporations with earnings and profits at the close of the corporation's taxable year.

S Corporations Without Earnings and Profits

The proposed regulations provide that a distribution by an S corporation without earnings and profits is not included in the shareholder's gross income to the extent the distribution does not exceed the adjusted bases of all the shareholder's shares of stock. If the amount of the distribution exceeds

the adjusted bases of all the shareholder's shares of stock, the excess is treated as gain from the sale or exchange of property.

S Corporation With Earnings and Profits

In general, a distribution by an S corporation with earnings and profits is treated as made out of AAA, to the extent of the AAA, and has the same effect as a distribution by a corporation without earnings and profits as described above (*i.e.*, return of basis and then gain from the sale or exchange of property). The portion of the distribution in excess of the AAA is treated as a dividend made out of the corporation's earnings and profits to the extent of the earnings and profits. Any remaining portion of the distribution in excess of earnings and profits as treated as a distribution made by an S corporation without earnings and profits (*i.e.*, return of basis and then gain from the sale or exchange of property).

Previously Taxed Income

The proposed regulations provide special rules for S corporations that have, with respect to one or more of their shareholders, previously taxed income (PTI) as defined under section 1375 (d) prior to its amendment by the Subchapter S Revision Act of 1982. These rules provide that a distribution by an S corporation in excess of the AAA is not included in the gross income of such a shareholder to the extent the distribution is an actual distribution of money and the portion in excess of the AAA does not exceed the shareholder's net share of the corporation's PTI immediately before the distribution. Thus, in general, a distribution by an S corporation to a shareholder with PTI is treated as a distribution made out of PTI after the AAA has been exhausted, but before a distribution is deemed to be a dividend out of earnings and profits. The portion of a distribution treated as a distribution made out of PTI decreases the adjusted basis of the shareholder's stock and, if that portion exceeds the adjusted basis of all the shareholder's shares, the excess is treated as gain from the sale or exchange of property. Distributions made from PTI do not decrease the AAA and earnings and profits of the corporation.

Adjustments Required Before Determining Tax Effect of Distribution

The proposed regulations provide that the tax effect of a distribution to a shareholder is determined only after taking into account the adjustments to the bases of the shareholder's shares of stock for the items described in section 1367 for the corporation's taxable year (without regard to distributions made during the taxable year). In addition, the proposed regulations provide that the determination of the source of a distribution is made only after the AAA has been adjusted to reflect (1) increases for income items (other than income that is exempt from tax) and the excess of the deductions for depletion, (2) decreases for nondeductible, noncapital expenses (other than Federal taxes attributable to any taxable year in which the corporation was a C corporation and expenses related to income that is exempt from tax), (3) decreases for certain oil and gas depletion deductions, and (4) decreases for items of loss or deduction.

Elections Under Section 1368

Elections to Modify the Rules for Determining the Source of Distributions

The general rule of section 1368 and the proposed regulations have the effect of treating distributions by an S corporation with earnings and profits as made first from the AAA until the AAA is exhausted and only then from earnings and profits. Although this ordering rule normally produces a taxpayer-favorable result, there are circumstances where the rule may not be to the taxpayer's advantage. For example, if an S corporation with C corporation earnings and profits has passive investment income in excess of a certain threshold, section 1375 imposes a corporate level tax on a prescribed portion of the passive investment income. If the corporation has excessive passive investment income for three consecutive taxable years, the corporation's S election terminates under section 1362(d)(3).

A corporation that seeks to avoid these adverse effects by distributing its C corporation earnings and profits may find it desirable to treat a distribution as made first from C corporation earnings and profits. The proposed regulations provide three elections that are designed to facilitate an S corporation's distribution of its earnings and profits: (1) An election to bypass the AAA, (2) an election to make a deemed dividend, and (3) an election to bypass PTI.

(1) *Election to bypass the AAA.* Under section 1368(e)(3) of the Code, a corporation with earnings and profits may elect to treat all distributions made during the taxable year as made first from earnings and profits. The proposed regulations provide that if this election is made, distributions out of subchapter C earnings and profits and then out of subchapter S earnings and profits.

(2) *Election to make a deemed dividend.* A corporation that wishes to distribute C corporation earnings and profits may lack sufficient liquid asset to make such a distribution. The proposed regulations provide an election that permits a corporation that elects to bypass the AAA to distribute its C corporation earnings and profits through a deemed dividend. A deemed dividend is a hypothetical distribution that is treated as made by the corporation from its subchapter C earnings and profits with respect to its stock on the last day of its taxable year to all shareholders holding stock on that day. The amount of the deemed dividend is limited to the excess of the corporation's C corporation earnings and profits on the first day of the corporation's taxable year over actual distributions of C corporation earnings and profits made during the taxable year. The deemed dividend is considered, for all purposes of the Code, a distribution by the corporation in money from C corporation earnings and profits, received by the shareholder on the last day of the corporation's taxable year, and immediately contributed by the shareholder as capital to the corporation on that day.

(3) *Election to bypass PTI.* Under the general rules, if an S corporation with earnings and profits also has PTI with respect to one or more of its shareholders from a taxable year ending before the effective date of the subchapter S Revision Act of 1982, distributions made in excess of the AAA are treated as made out of PTI before they are treated as made out of earnings and profits. Thus, even if an S corporation makes the election to bypass the AAA, absent a special rule, the distribution would be treated as made first out of PTI and then out of earnings and profits. The proposed regulations permit an S corporation to elect to treat distributions as not made from PTI.

Election in Case of Disposition of Substantial Amounts of Stock

A shareholder who disposes of a substantial interest in the corporation before the end of the year cannot be certain of the tax consequences of the disposition or of the distributions made to the shareholder during the taxable year before that shareholder disposes of his or her stock. To alleviate this uncertainty, the proposed regulations provide that, if a shareholder disposes of 20 percent or more of the corporation's issued shares of stock in one or more transactions during any thirty-day period during the taxable year of the corporation, the corporation may elect to treat the taxable year as if it

consists of separate taxable years, the first of which ends on the date on which the shareholder disposes of 20 percent or more of the corporation's issued stock. Under the election, the taxable year is treated as if it consists of separate years for purposes of allocating items of income and loss, making adjustments to the AAA, basis, and earnings and profits, and determining the tax effect of distributions.

Rules Relating to the AAA

In General

The AAA is an account of the S corporation that generally reflect the accumulated undistributed net income of the corporation for the corporation's post-1982 years. S corporations with earnings and profits must maintain the AAA to determine the tax effect of distributions during S years and the post-termination transition period. An S corporation without earnings and profits does not need to maintain the AAA in order to determine the tax effect of distributions. Nevertheless, if an S corporation without earnings and profits engages in certain transactions to which section 381(a) applies, such as a merger into an S corporation with C corporation earnings and profits, the S corporation must be able to calculate its AAA at the time of the merger for purposes of determining the tax effect of post-merger distributions.

Adjustments Made to the AAA

Certain adjustments are made to the AAA each taxable year. As described above under distributions by S Corporations, except for the treatment of tax-exempt income (and related expenses) and certain Federal tax liabilities, the AAA adjustments are the same as those made to the basis of stock under section 1367. The AAA may not be reduced below zero for distributions, but, unlike the basis of stock, the AAA may be reduced below zero if losses and deductions of the corporation exceed income. Moreover, the AAA is adjusted to reflect the entire amount of any loss or deduction even though a portion of the loss or deduction is disallowed to a shareholder for the taxable year under section 1366(d)(1) or another provision of the Code.

Special Rules

The proposed regulations provide that if the sum of all distributions (other than distributions made out of earnings and profits or PTI) during the taxable year exceeds the amount in the AAA at the close of the taxable year, the balance of the AAA is allocated among these distributions in proportion to their respective sizes. The regulations also provide special rules for distributions consisting of money and other property the basis of which exceeds its fair market value. In this case, the AAA must be allocated further between the money and the other property distributed, based on the proportion of the money or the fair market of the other property to the amount of the distribution.

In the case of a redemption that is treated as an exchange of stock under section 302(a) or 303(a), the AAA of the corporation is adjusted in an amount equal to the ratable share of the corporation's AAA attributable to the redeemed stock. In the case of a taxable year in which ordinary distributions and redemption distributions occur, the ratable share of the AAA attributable to the redeemed stock is determined under the method used to determine the pro rata portion of total earnings and profits attributable to shares redeemed in a C corporation. See Rev. Rul. 74–338, 1974–2 C.B. 101, and Rev. Rul. 74–339, 1974–2 C.B. 103. The rules set forth in these revenue rulings, rather than the general rules previously described, also apply to determine the effect on the AAA for distributions made during the taxable year of the redemption. For purposes of applying these rules, the portion of the corporation's AAA as of the beginning of the first day of the taxable year in which a redemption occurs is considered the Accumulated AAA and is treated in the same manner as accumulated earnings and profits. The portion of the corporation's AAA attributable to the taxable year of the corporation in which the redemption occurs is considered the current AAA and is treated in the same manner as current earnings and profits. In making any adjustments to the AAA in years in which a redemption occurs, the amount of the accumulated AAA or the current AAA may not exceed the amount of the AAA as of the end of the taxable year of the redemption. The Service invites comments regarding alternative approaches that appropriately reduce the AAA in the case of redemptions.

In the case of an S corporation that acquires the assets of another S corporation in a transaction to which section 381(a)(2) applies, the acquiring corporation succeeds to and merges its AAA with the AAA of the distributor or transferor corporation. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAA of both corporations immediately prior to the transaction.

In the case of a corporate separation to which section 368(a)(1)(D) applies, the proposed regulations provide that the AAA is allocated among the corporations in a manner similar to the allocation of earnings and profits under section 312(f) and the regulations thereunder.

Effective Date

The proposed regulations under sections 1367 and 1368 apply to taxable years of the corporation beginning after [_____ the regulations are published as final regulations in the **Federal Register**].

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel For Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments, requests to appear and outlines of oral comments to be presented at a public hearing scheduled for September 14, 1992 at 10 a.m. must be received by August 24, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Judith C. Winkler and Christine E. Ellison of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1361–0A Through 1.1388–1

Income taxes, Reporting and recordkeeping requirements, and Small businesses.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.1368–1 (f) and (g) also issued under 26 U.S.C. 1377(c). Section 1.1368–2(b) also issued under 26 U.S.C. 1368(c).

Par. 2. Sections 1.1367–0 through 1.1367–3 and 1.1368 through 1.1368–4 are added to read as follows:

§ 1.1367–0 Table of Contents.

The following table of contents is provided to facilitate the use of §§ 1.1367–1 through 1.1367–3:

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) In general.
(1) Adjustments under section 1367.
(2) Applicability of other Code provisions.
(b) Increase in basis of stock.
(1) In general.
(2) Amount of increase in basis of individual shares.
(c) Decrease in basis of stock.
(1) In general.
(2) Noncapital, nondeductible expenses.
(3) Amount of decrease in basis of individual shares.
(d) Time at which adjustments to basis of stock are effective.
(1) In general.
(2) Adjustment for nontaxable item.
(3) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Ordering rules.
(f) Examples.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) In general.
(b) Reduction in basis of indebtedness.
(1) General rule.
(2) Termination of shareholder's interest in corporation during taxable year.
(3) Multiple indebtedness.
(c) Restoration of basis.
(1) General rule.
(2) Multiple indebtedness.
(d) Time at which adjustments to basis of indebtedness are effective.
(1) In general.
(2) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Examples.

§ 1.1367–3 Effective date.

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) *In general.*—(1) *Adjustments under section 1367.* This section provides rules relating to adjustments required by section 1367 to the basis of a shareholder's stock in an S corporation. Paragraph (b) of this section provides rules concerning increases in the basis of a shareholder's stock, and paragraph (c) of this section provides rules concerning decreases in the basis of a shareholder's stock.

(2) *Applicability of other Code provisions.* In addition to the adjustments required by section 1367 and this section, the basis of stock is determined or adjusted under other applicable provisions of the Code.

(b) *Increase in basis of stock*—(1) *In general.* Except as provided in § 1.1367–2(c) (relating to restoration of basis of indebtedness to the shareholder), the basis of a shareholder's stock in an S corporation is increased by the sum of the items described in section 1367(a)(1). The increase in basis described in section 1367(a)(1)(C) for the excess of the deduction for depletion over the basis of the property subject to depletion does not include the depletion deduction attributable to oil or gas property. See section 613(A)(c)(11).

(2) *Amount of increase in basis of individual shares.* The basis of a shareholder's share of stock is increased by an amount equal to the shareholder's pro rata portion of the items described in section 1367(a)(1) that is attributable to that share, determined on a per share, per day basis in accordance with section 1377(a).

(c) *Decrease in basis of stock*—(1) *In general.* The basis of a shareholder's stock in an S corporation is decreased (but not below zero) by the sum of the items described in section 1367(a)(2).

(2) *Noncapital, nondeductible expenses.* For purposes of section 1367(a)(2)(D), expenses of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account (*noncapital, nondeductible expenses*) are only those items for which no loss or deduction is allowable and do not include items the deduction for which is deferred to a later taxable year. Examples of noncapital, nondeductible expenses include (but are not limited to) the following: Illegal bribes, kickbacks, and other payments not deductible under section 162(c); fines and penalties not deductible under section 162(f); expenses and interest relating to tax-exempt income under section 265; losses for which the deduction is disallowed under section 267(a)(1); the portion of meals and entertainment expenses disallowed under section 274; and two-thirds of treble damages paid for violating antitrust laws not deductible under section 162.

(3) *Amount of decrease in basis of individual shares.* The basis of a shareholder's share of stock is decreased by an amount equal to the shareholder's pro rata portion of the item described in section 1377(a)(2) attributable to that share, determined on a per share, per day basis in accordance with section 1377(a). If the amount attributable to a share exceeds its basis, the excess is applied to reduce (but not below zero) the remaining bases of all other shares of stock in the corporation owned by the shareholder in proportion to the remaining basis of each of those shares.

(d) *Time at which adjustments to basis of stock are effective*—(1) *In general.* The adjustments described in section 1367(a) to the basis of a shareholder's stock are determined as of the close of the corporation's taxable year, and the adjustments generally are effective as of that date. However, if a shareholder disposes of stock during the corporation's taxable year, the adjustments with respect to that stock are effective immediately prior to the disposition.

(2) *Adustment for nontaxable item.* An adjustment for a nontaxable item is determined with respect to the taxable year in which the item would have been includible or deductible under the corporation's method of accounting for federal income tax purposes if the item had been subject to federal income taxation.

(3) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a disposition of a substantial amount of stock) is made with respect to the taxable year of a corporation, this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder either terminates the shareholder's interest in the corporation or disposes of a substantial amount of stock, whichever the case may be.

(e) *Ordering rules.* For any taxable year, the adjustments required by section 1367(a) are made in the following order:

(1) Any increase in basis attributable to the income items described in section

1367(a)(1) (A) and (B) and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to nondeductible, noncapital expenses described in section 1367(a)(2)(D) and the oil and gas depletion deduction described in section 1367(a)(2)(E);

(3) Any decrease in basis attributable to the items of loss or deduction described in section 1367(a)(2)(B) and (C); and

(4) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A).

(f) *Examples.* The following examples illustrate the principles of § 1.1367–1. In each example, the corporation is a calendar year S corporation:

Example 1. Adjustments to basis of stock in general. (i) On December 31, 1992, A owns a block of 50 shares of stock with an adjusted basis per share of $6 in Corporation S. On January 1, 1993, A purchases for $400 an additional block of 50 shares of stock with an adjusted basis of $8 per share. Thus, A holds 100 shares of stock for each day of the 1993 taxable year. For S's 1993 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $300, and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) through (D) (relating to decreases in basis of stock) is $500. S makes a distribution to A in the amount of $100 during 1993.

(ii) Pursuant to the ordering rules of paragraph (e) of this section, A increases the basis of each share of stock by $3 ($300/100 shares) and decreases the basis of each share of stock by $5 ($500/100 shares). Then A reduces the basis of each share by $1 ($100/100 shares) for the distribution. Thus, on January 1, 1994, A has a basis of $3 per share in his original block of 50 shares ($6+$3−$5−$1) and a basis of $5 per share in the second block of 50 shares ($8+3−$5−$1).

Example 2. Adjustments attributable to basis of individual shares of stock. (i) On December 31, 1992, B owns one share of S corporation's 10 outstanding shares of stock. The basis of B's share is $30. On July 2, 1993, B purchases from another shareholder two shares for $25 each. During 1993, S corporation has no income or deductions but incurs a loss of $365. Under section 1377(a)(1)(A) and paragraph (c)(3) of this section, the amount of the loss assigned to each day of S's taxable year is $1.00 ($365/365 days). For each day, $.10 is allocated to each outstanding share ($1.00 amount of loss assigned to each day/10 shares).

(ii) B owned one share for 365 days and, therefore, reduces the basis of that share by the amount of loss attributable to it, *i.e.*, $36.50 ($.10×365 days). B owned two shares for 182 days and, therefore, reduces the basis of each of those shares by the amount of the loss attributable to each, *i.e.*, $18.20 ($.10×182 days).

(iii) The bases of the shares are decreased as follows:

Share	Original basis	Decrease	Adjusted basis	Excess basis reduction
No. 1	$30.00	$36.50	$0	$6.50
No. 2	25.00	18.20	6.80	
No. 3	25.00	18.20	6.80	
Total remaining basis			13.60	

(iv) Because the decrease in basis attributable to share No. 1 exceeds the basis of share No. 1 by $6.50 ($36.50−$30.00), the excess is applied to reduce the bases of shares No. 2 and No. 3 in proportion to their remaining bases. Therefore, the bases of share No. 2 and share No. 3 are each decreased by an additional $3.25 ($6.50×$6.80/$13.60). After this decrease, Share No. 1 has a basis of zero, Share No. 2 has a basis of $3.55, and Share No. 3 has a basis of $3.55.

Example 3. Effects of section 1377(a)(2) election and distribution on basis of stock. (i) On January 1, 1994, individuals B and C each own 50 of the 100 shares of issued and outstanding stock of Corporation S. B's adjusted basis in each share of stock is $120, and C's is $80. On June 30, 1994, S distributes $6,000 to B and $6,000 to C. On June 30, 1994, B sells all of her S stock for $10,000 to D. S elects under section 1377(a)(2) to treat its 1994 taxable year as consisting of two taxable years, the first of which ends at the close of June 30, the date on which B terminates her interest in S.

(ii) For the period January 1, 1994, through June 30, 1994, S has income of $6,000 and deductions of $4,000. Therefore, on June 30, 1994, B and C, pursuant to the ordering rules of paragraph (e) of this section, increase the basis of each share by $60 ($6,000/100 shares) and decrease the basis of each share by $40 ($4,000/100 shares). Then B and C reduce the basis of each share by $120 ($12,000/100 shares) for the distribution.

(iii) The basis of B's stock is reduced from $120 to $20 per share ($120+$60−$40−$120). The basis of C's stock is reduced from $80 to $0 per share ($80+$60−$40−$120). See section 1368 and § 1.1368-1 (c) and (d) for rules relating to the tax treatment of the distributions.

(iv) Pursuant to paragraph (d)(3) of this section, the net reduction in the basis of B's shares of the S stock required by section 1367 and this section is effective immediately prior to B's sale of her stock. Thus, B's basis for determining gain or loss on the sale of the S stock is $20 per share, and B has a gain on the sale of $180 ($200−$20) per share.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) *In general.* This section provides rules relating to adjustments required by subchapter S to the basis of indebtedness of an S corporation to a shareholder. The basis of indebtedness of the S corporation to a shareholder is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section.

(b) *Reduction in basis of indebtedness*—(1) *General rule.* If, after making the adjustments required by section 1367(a)(1) for any taxable year of the S corporation, the amounts specified in section 1367(a)(2) (B), (C), (D), and (E) (relating to losses, deductions, nondeductible noncapital expenses, and certain oil and gas depletion deductions) exceed the basis of the shareholder's stock in the corporation, the excess is applied to reduce (but not below zero) the basis of any indebtedness of the S corporation to the shareholder held by the shareholder at the close of the corporation's taxable year. Any such indebtedness that has been satisfied by the corporation, or disposed of or forgiven by the shareholder, during the taxable year, is not held by the shareholder at the close of that year and is not subject to basis reduction.

(2) *Termination of shareholder's interest in corporation during taxable year.* If a shareholder terminates his or her interest in the corporation during the taxable year, the rules of this paragraph (b) are applied with respect to any indebtedness of the S corporation held by the shareholder immediately prior to the termination of the shareholder's interest in the corporation.

(3) *Multiple indebtedness.* If the shareholder holds more than one indebtedness at the close of the corporation's taxable year or, if applicable, immediately prior to the termination of the shareholder's interest in the corporation, the reduction in basis is applied to each indebtedness in the same proportion that the basis of each indebtedness bears to the aggregate bases of the indebtedness to the shareholder.

(c) *Restoration of basis*—(1) *General rule.* If, for any taxable year of an S corporation beginning after December 31, 1982, there has been a reduction in the basis of an indebtedness of the S corporation to the shareholder under section 1367(b)(2)(A), any net increase in any subsequent taxable year of the corporation is applied to restore that reduction. For purposes of this section, net increase with respect to a shareholder means the amount by which the shareholder's pro rata share of the items described in section 1367(a)(1) (relating to income items and excess deduction for depletion) exceed the items described in section 1367(a)(2) (relating to losses, deductions, nondeductible noncapital expenses, certain oil and gas depletion deductions, and certain distributions) for the taxable year. These restoration rules apply only to indebtedness held by the shareholder on the first day of the taxable year in which the net increase arises. The reduction in basis of indebtedness must be restored before any net increase is applied to restore the basis of a shareholder's stock in an S corporation, but in no event may the shareholder's basis of indebtedness be restored above the outstanding balance of the indebtedness determined as of the first day of the taxable year in which the net increase arises.

(2) *Multiple indebtedness.* If the shareholder holds more than one indebtedness on the first day of the corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness in proportion to the amount that the basis of each outstanding indebtedness has been reduced under section 1367(b)(2)(A), and paragraph (b) of this section and not restored under section 1367(b)(2)(B) and this paragraph (c).

(d) *Time at which adjustments to basis of indebtedness are effective*—(1) *In general.* The amounts of the adjustments to basis of indebtedness provided in section 1367(b)(2) and this section are determined as of the close of the corporation's taxable year, and the adjustments are generally effective as of the close of the corporation's taxable year. However, if the shareholder is not a shareholder in the corporation at that time, these adjustments are effective immediately before the shareholder terminates his or her interest in the corporation. If a debt is disposed of or repaid in whole or in part before the close of the taxable year, the basis of that indebtedness is restored under paragraph (c) of this section, effective immediately before the disposition or the first repayment on the debt during the taxable year.

(2) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a disposition of a substantial amount of stock), this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder either terminates his or her interest in the corporation or disposes of a substantial amount of stock, whichever the case may be.

(e) *Examples.* The following examples illustrate the principles of § 1.1367–2. In each example, the corporation is a calendar year S corporation. The lending transactions described in the examples do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)).

Example 1. Reduction in basis of indebtedness. (i) A has been the sole shareholder in Corporation S since 1992. In 1993, A loans S $1,000 (Debt No. 1), which is evidenced by a ten-year promissory note in the face amount of $1,000. In 1996, A loans S $5,000 (Debt No. 2), which is evidenced by a demand promissory note. On December 31, 1996, the basis of A's stock is zero; the basis of Debt No. 1 has been reduced under paragraph (b) of this section to $0; and the basis of Debt No. 2 has been reduced to $1,000. On January 1, 1997, A loans S $4,000 (Debt No. 3), which is evidenced by a demand promissory note. For S's 1997 taxable year, the sum of the amounts specified in section 1367(a)(1) (relating to income items and excess deduction for depletion) is $6,000, and the sum of the amounts specified in section 1367(a)(2) (B), (C), (D), and (E) (relating to losses, deductions, nondeductible noncapital expenses and certain oil and gas depletion deductions) is $10,000. Corporation S makes no payments to A on any of the loans during 1997.

(ii) The $4,000 excess of loss and deduction items is applied to reduce the basis of each indebtedness in proportion to the basis of that indebtedness over the aggregate bases of the indebtedness to the shareholder (determined immediately before any adjustment under section 1367(b)(2)(A) and paragraph (b) of this section is effective for the taxable year). Thus, the basis of Debt No. 2 is reduced in an amount equal to $800 ($4,000 (excess) x $1,000 (basis of Debt No. 2) / $5,000 (total basis of all debt)). Similarly, the basis in Debt No. 3 is reduced in an amount equal to $3,200 ($4,000 x $4,000/$5,000). Accordingly, on December 31, 1997, A's basis in his stock is zero and his bases in the three debts are as follows:

Debt	1/1/96 basis	12/31/96 reduction	1/1/97 basis	12/31/97 reduction	1/1/98 basis
No. 1	$1,000	$1,000	$0	$0	$0
No. 2	5,000	4,000	1,000	800	200
No. 3			4,000	3,200	800

Example 2. Restoration of basis of indebtedness. (i) The facts are the same as in Example 1. On July 1, 1998, S completely repays Debt No. 3, and, for S's 1998 taxable year, the net increase (within the meaning of paragraph (c) of this section) with respect to A equals $4,500.

(ii) The net increase is applied first to restore the bases in the debts held on January 1, 1998, before any of the net increase is applied to increase A's basis in his shares of S stock. The net increase is applied to restore first the reduction of basis in indebtedness repaid in 1998. Any remaining net increase is applied to restore the bases of the outstanding debts in proportion to the amount that each of these outstanding debts have been reduced previously under paragraph (b) of this section and have not been restored. As of December 31, 1998, the total reduction in A's debts held on January 1, 1998 equals $9,000. Thus, the basis of Debt No. 3 is restored by $3,200 (the amount of the previous reduction) to $4,000. A's basis in Debt No. 3 is treated as restored immediately before that debt is repaid. Accordingly, A does not realize any gain on the repayment. The remaining net increase of $1,300 ($4,500–$3,200) is applied to restore the bases of Debt No. 1 and Debt No. 2. As of December 31, 1998, the total reduction in these outstanding debts is $5,800 ($9,000–$3,200). The basis of Debt No. 1 is restored in an amount equal to $224 ($1,300 × $1,000/$5,800). Similarly, the basis in Debt No. 2 is restored in an amount equal to $1,076 ($1,300×$4,800/$5,800). On December 31, 1998, A's basis in his S stock is zero and his bases in the two remaining debts are as follows:

Original bases	Amount reduced	1/1/98 basis	Amount restored	12/31/98 basis
$1,000	$1,000	$0	$224	$224
5,000	4,800	200	1,076	1,276

Example 3. Restoration of basis in indebtedness when debt is repaid in part during the taxable year. (i) C has been a shareholder in Corporation S since 1992. In 1997, C loans S $1,000. S issues its note to C in the amount of $1,000, of which $950 is payable on March 1, 1998, and $50 is payable on March 1, 1999. On December 31, 1997, C's basis in all her shares of S stock is zero and her basis in the note has been reduced under paragraph (b) of this section to $900. For 1998, the net increase (within the meaning of paragraph (c) of this section) with respect to C is $300.

(ii) Because C's basis of indebtedness was reduced in a prior taxable year under § 1.1367–2(b), the net increase for 1998 is applied to restore this reduction in an amount that does not exceed the outstanding balance of the debt on the first day of 1998. The outstanding balance of the debt on January 1, 1998 was $1,000. Therefore, $100 of the $300 net increase is applied to restore the basis of the debt from $900 to $1,000 effective immediately before the repayment. The remaining net increase of $200 increases C's basis in her stock.

Example 4. Determination of net increase—distribution in excess of increase in basis. (i) D has been the sole shareholder in Corporation S since 1990. On January 1, 1996, D loans S $10,000 in return for a note from S in the amount of $10,000 of which $5,000 is payable on each of January 1, 2000, and January 1, 2001. On December 31, 1997, the basis of D's shares of S stock is zero, and his basis in the note has been reduced under paragraph (b) of this section to $8,000. During 1998, the sum of the items under section 1367(a)(1) (relating to increases in basis of stock) with respect to D equals $10,000, and the sum of the items under section 1367(a)(2)(B), (C), (D), and (E) (relating to decreases in basis of stock) with respect to D equals $0. During 1998, S also makes distributions to D totaling $11,000. This distribution is an item that reduces basis of stock under section 1367(a)(2)(A) and must be taken into account for purposes of determining whether there is a net increase for the taxable year. Thus, for 1998, there is no net increase with respect to D because the amount of the items provided in section 1367(a)(1) do not exceed the amount of the items provided in section 1367(a)(2).

(ii) Because there is no net increase with respect to D for 1998, none of the 1997 reduction in D's basis in the indebtedness is restored. The $10,000 increase in basis under section 1367(a)(1) is applied to increase D's basis in his S stock. Under section 1367(a)(2)(A), the $11,000 distribution with respect to D's stock reduces D's basis in his shares of S stock to $0. See section 1368 and § 1.1368–1 (c) and (d) for the tax treatment of the $1,000 distribution in excess of D's basis.

Example 5. Distributions less than increase in basis. (i) The facts are the same as in *Example 4*, except that in 1998 S makes distributions to D totaling $8,000. On these facts, for 1998, there is a net increase with respect to D of $2,000 (the amount by which the items provided in section 1367(a)(1) exceed the amount of the items provided in section 1367(a)(2)).

(ii) Because there is a net increase of $2,000 with respect to D for 1998, $2,000 of the $10,000 increase in basis under section 1367(a)(1) is first applied to restore D's basis in the indebtedness to $10,000 ($8,000 + $2,000). Accordingly, on December 31, 1998, D has a basis in his shares of S stock of $0 ($0 + $8,000 (increase in basis remaining after restoring basis in indebtedness)—$8,000 (distribution)) and a basis in the note of $10,000.

§ 1.1367–3 Effective date.

Sections 1.1367–1 and 1.1367–2 apply to taxable years of the corporation beginning after [the date that these regulations are published as final regulations in the **Federal Register**].

§ 1.1368–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1368–1 through 1.1368–4:

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§ 1.1368–3 Examples.

§ 1.1368–4 Effective date.

§ 1.1368–1 Distributions by S corporations.

(a) *In general.* This section provides rules for distributions made by an S corporation with respect to its stock to which, but for section 1368(a) and this section, section 301(c) and other rules of the Code that characterize a distribution as a dividend, would apply.

(b) *Date distribution made.* For purposes of section 1368, a distribution is taken into account on the date the corporation makes the distribution, regardless of when the distribution is treated as received by the shareholder.

(c) *S corporation with no earnings and profits.* A distribution made by an S corporation that has no accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(b).

(d) *S corporation with earnings and profits*—(1) *General treatment of distribution.* Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c) (1), (2), and (3). See section 316 and § 1.316–2 for provisions relating to the allocation of earnings and profits among distributions.

(2) *Previously taxed income.* This paragraph (d)(2) applies to distributions by a corporation that has both accumulated earnings and profits and previously taxed income (within the meaning of section 1375(d)(2), as in effect prior to its amendment by the subchapter S Revision Act of 1982, and the regulations thereunder) with respect to one or more shareholders. In the case of such a distribution, that portion remaining after the application of section 1368(c)(1) (relating to distributions from the accumulated adjustments account (AAA) as defined in § 1.1368–2(a)) is treated in the manner

provided in section 1368(b) (relating to S corporations without earnings and profits) to the extent that portion is a distribution of money and does not exceed the shareholder's net share immediately before the distribution of the corporation's previously taxed income. The AAA and the earnings and profits of the corporation are not decreased by that portion of the distribution. Any distribution remaining after the application of this paragraph (d)(2) is treated in the manner provided in section 1368(c) (2) and (3).

(e) *Certain adjustments taken into account. Paragraphs (c) and (d) of this section are applied only after taking into account*—

(1) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A)) (relating to decreases attributable to distributions not includible in income) for the S corporation's taxable year; and

(2) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year.

(f) *Elections relating to source of distributions*—(1) *In general.* An S corporation may modify the application of paragraphs (c) and (d) of this section by—

(i) Electing to distribute earnings and profits first as described in paragraph (f)(2) of this section;

(ii) Election to make a deemed dividend as described in paragraph (f)(3) of this section; or

(iii) Electing to forego previously taxed income as described in paragraph (f)(4) of this section.

Rules relating to the time and manner of making the elections provided in this paragraph (f) are set forth in paragraph (f)(5) of this section.

(2) *Election to distribute earnings and profits first*—(i) *In general.* As S corporation with accumulated earnings and profits may elect under this paragraph (f)(2) for any taxable year to distribute earnings and profits first as provided in section 1368(e)(3). Except as provided in paragraph (f)(2)(ii) of this section, distributions made by S corporation making this election are treated as made first from earnings and profits under section 1368(c)(2) and second from the AAA under section 1368(c)(1). Any remaining portion of the distribution is treated in the manner provided in section 1368(b). This election is effective for all distributions made during the year for which the election is made. In applying the preceding sentence, any election to terminate the taxable year under section 1377 or § 1.1368–1(g)(2) is disregarded.

(ii) *Previously taxed income.* If a corporation to which paragraph (d)(2) of this section (relating to corporations with previously taxed income) applies makes the election provided in this paragraph (f)(2) for the taxable year, and does not make the election to forego previously taxed, income under paragraph (f)(4) of this section, distributions by the S corporation during the taxable year are treated as made first, from previously taxed income under paragraph (d)(2) of this section; second, from earnings and profits under section 1368(c)(2); and third, from the AAA under section 1368(c)(1). Any portion of a distribution remaining after the previously taxed income, earnings and profits, and the AAA are exhausted is treated in the manner provided in section 1368(b).

(iii) *Corporation with subchapter C and subchapter S earnings and profits.* If an S corporation that makes the election provided in this paragraph (f)(2) has both subchapter C earnings and profits (as defined in section 1362(d)(3)(B)) and subchapter S earnings and profits in a taxable year of the corporation in which the distribution is made, the distribution is treated as made first from subchapter C earnings and profits, and second from subchapter S earnings and profits. Subchapter S earnings and profits are earnings and profits accumulated in a taxable year beginning before January 1, 1983 (or in the case of a qualified casualty insurance electing small business corporation or a qualified oil corporation, earnings and profits accumulated in any taxable year), for which an election under subchapter S of chapter 1 of the Code was in effect.

(3) *Election to make a deemed dividend*—(i) *In general.* As S corporation that makes the election provided in paragraph (f)(2) of this section also may elect under this paragraph (f)(3) to distribute all or part of its subchapter C earnings and profits through a deemed dividend. The amount of the deemed dividend may not exceed the subchapter C earnings and profits of the corporation on the last day of the taxable year, reduced by any actual distributions of subchapter C earnings and profits made during the taxable year. The amount of the deemed dividend is considered, for all purposes of the Code, as if it were distributed in money to the shareholders in proportion to their stock ownership, received by the shareholders, and immediately contributed by the shareholders to the corporation, all on the last day of the corporation's taxable year.

(ii) *Special rules for election and shareholder consent.* In addition to the information required under paragraph (f)(5) of this section, a statement of election to make a deemed dividend election under this paragraph must include the amount of the deemed dividend that is distributed to each shareholder. Each shareholder that owns stock on the last day of the taxable year of the corporation must provide in writing, under penalties of perjury, its consent to the corporation's deemed dividend election and agreement to treat the deemed dividend consistently with the rules of this section.

(4) *Election to forego previously taxed income.* As S corporation may elect to forego distributions of previously taxed income. If such an election is made, paragraph (d)(2) of this section (relating to corporations with previously taxed income) does not apply to any distribution made during the taxable year (determined without regard to any elections made under section 1377 or § 1.1368–1(g)(2)). Thus, distributions by a corporation that makes the election to forego previously taxed income for a taxable year under this paragraph (f)(4) and does not make the election to distribute earnings and profits first under paragraph (f)(2) of this section are treated in the manner provided in section 1368(c) (relating to distributions by corporations with earnings and profits). Distributions by a corporation that makes both the election to distribute earnings and profits first under paragraph (f)(2) of this section and the election to forego previously taxed income under this paragraph (f)(4), are treated in the manner provided in paragraph (f)(2)(i) of this section.

(5) *Time and manner of making elections.* A corporation makes an election for a taxable year under this paragraph (f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. The statement must state that the corporation is making an election under § 1.1368–1(f), identify the election, and be signed under penalties of perjury by an officer of the corporation on behalf of the corporation and by each shareholder of the corporation who receives a distribution during the taxable year (including a deemed dividend as described under paragraph (f)(3) of this section). For purposes of the elections under this paragraph (f), a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). The elections under this

paragraph (f) are irrevocable and are effective only for the taxable year for which they are made. (In applying the preceding sentence, an election to terminate the taxable year under section 1377(a)(2) or § 1.1368–1(g)(2) is disregarded.)

(g) *Special rules*—(1) *Election to terminate year under section 1377 or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year when the shareholder terminates his or her interest in the corporation) or under paragraph (g)(2) of this section (to terminate the year when shareholder disposes of substantial amounts of stock), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminates his or her interest in the corporation or makes a substantial disposition of stock, whichever the case may be.

(2) *Election in case of disposition of substantial amounts of stock*—(i) *In general.* If there is a disposition by any shareholder of 20 percent or more of the issued stock of the corporation in one or more transactions during any thirty-day period during the corporation's taxable year (a qualifying disposition), the corporation may elect under this paragraph (g)(2) to treat the year as if it consisted of separate taxable years, the first of which ends at the close of the day on which the qualifying disposition occurs. A corporation making this election treats the taxable year as separate taxable years for purposes of allocating items of income and loss; making adjustments to the AAA, earnings and profits, and basis; and determining the tax effect of distributions under section 1369 (b) and (c). This election may be made upon the occurrence of any qualifying disposition. Dispositions of stock by a shareholder that are taken into account as part of a qualifying disposition are not taken into account in determining whether the shareholder has made a subsequent qualifying disposition.

(ii) *Time and manner of making election.* A corporation makes an election under this paragraph (g)(2) for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under this paragraph (g) (2)). The statement must state that the corporation is electing for the taxable year under § 1.1368–1(g)(2) to treat the taxable year as if it consisted of separate taxable years. The statement also must set forth the facts relating to the qualifying disposition (e.g., sale, gift), and must be signed under penalties of perjury by an officer of the corporation on behalf of the corporation and by all shareholders who held stock in the corporation during the taxable year (without regard to the election under this paragraph (g)(2)). For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under this paragraph (g)(2) for the taxable year. An election made under this paragraph (g)(2) is irrevocable.

§ 1.1368–2 Accumulated adjustments account.

(a) *Accumulated adjustments account (AAA)*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, reorganizations, and corporate separations, see paragraph (d) of this section.

(2) *Increases to the AAA.* The AAA is increased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year:

(i) The items of income described in section 1366(a)(1)(A) other than income that is exempt from tax;

(ii) Any nonseparately computed income determined under section 1366(a)(1)(B); and

(iii) The excess of the deductions for depletion over the basis of property subject to depletion unless the property is an oil or gas property the basis of which has been allocated to shareholders under section 613A(c)(11).

The AAA is increased under this paragraph (a)(2) before it is decreased under paragraph (a)(3) of this section for the taxable year.

(3) *Decreases to the AAA*—(i) *In general.* The AAA is decreased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year—

(A) The items of loss or deduction described in section 1366(a)(1)(A);

(B) Any nonseparately computed loss determined under section 1366(a)(1)(B);

(C) Any expense of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account, other than—

(*1*) Federal taxes attributable to any taxable year in which the corporation was a C corporation, and

(*2*) Expenses related to income that is exempt from tax; and

(D) The sum of the shareholders' deductions for depletion for any oil or gas property held by the corporation described in section 1367(a)(2)(E).

The AAA is decreased under this paragraph (a)(3)(i) of this section before it is decreased under paragraph (a)(3)(iii) of this section.

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Code. However, in any subsequent taxable year in which the loss or deduction is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

(iii) *Decrease to the AAA for distributions.* The AAA is decreased (but not below zero) by any portion of a distribution to which section 1368 (b) or (c)(1) applies.

(b) *Distributions in excess of the AAA.* A portion of the AAA is allocated to each of the distributions made for the taxable year if—

(1) An S corporation makes more than one distribution of property with respect to its stock during the taxable year of the corporation (including an S short year as defined under section 1362(e)(1)(A));

(2) The AAA has a positive balance at the close of the year; and

(3) The sum of the distributions made during the corporation's taxable year exceeds the balance of the AAA at the close of the year.

The amount allocated to each distribution is determined by multiplying the balance of the AAA at the close of the current taxable year by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the amount of all distributions made during the taxable year. For purposes of this paragraph (b), the term all distributions made during the taxable year does not include any distribution treated as from earnings and profits or previously taxed income

pursuant to an election made under section 1368(e)(3) and § 1.1368–1(f)(2). See paragraph (d)(1) of this section for rules relating to the adjustments to the AAA for redemptions and distributions in the year of a redemption.

(c) *Distribution of money and loss property.* The amount of the AAA allocated to a distribution under this section must be further allocated if the distribution—

(1) Consists of money and other property the adjusted basis of which exceeds its fair market value on the date of the distribution;

(2) Is a distribution to which § 1.1368–1(d)(1) applies; and

(3) Exceeds the amount of the corporation's AAA properly allocable to that distribution.

The amount of the AAA allocated to the other property is equal to the amount of the AAA allocated to that distribution multiplied by a fraction, the numerator of which is the fair market value of the other property on the date of distribution and the denominator of which is the amount of the distribution. The amount of the AAA allocated to the money is equal to the amount of the AAA allocated to the distribution reduced by the amount of the AAA allocated to the other property.

(d) *Adjustment in the case of redemptions, reorganizations, and divisions*—(1) *Redemptions*—(i) *General Rule.* In the case of a redemption distribution by an S corporation that is treated as an exchange under section 302(a) or section 303(a) (a redemption distribution), the AAA of the corporation is adjusted in an amount equal to the ratable share of the corporation's AAA (whether negative or positive) attributable to the redeemed stock as of the date of the redemption.

(ii) *Special rule for years in which the corporation makes both ordinary and redemption distributions*—(A) *In general.* The rules governing the allocation of a C corporation's current and accumulated earnings and profits under section 312(n)(7) apply in any year in which the corporation—

(*1*) Makes one or more distributions to which section 1368 (a) and § 1.1368–1 apply (ordinary distributions);

(*2*) Makes one or more redemption distributions to which this paragraph (d)(1) applies; and

(*3*) Has a positive AAA balance after making the adjustments required under paragraphs (a)(2) and (a)(3)(i) of this section.

For purposes of this paragraph (d)(1)(ii), the portion of the corporation's AAA that is attributable to the taxable year of the corporation in which the distributions are made (current AAA) is treated in the manner prescribed for current earnings and profits of a C corporation. The portion of the corporation's AAA that is attributable to taxable years ending before the taxable year in which the distributions are made (accumulated AAA) is treated in the manner prescribed for accumulated earnings and profits of a C corporation.

(B) *Special rule for taxable years in which corporation's current AAA or accumulated AAA is less than zero.* If, for any year of the corporation for which paragraph (d)(1)(ii) applies, the corporation's current AAA or accumulated AAA is less than zero,

(*1*) The amount of the AAA allocated under paragraph (d)(1)(ii)(A) may not exceed the sum of the current AAA and the accumulated AAA; and

(*2*) The AAA is allocated in the manner prescribed for that portion of the AAA that gives rise to the corporation's positive AAA balance.

(iii) *Adjustment to earnings and profits.* See section 312(n)(7) and the regulations thereunder for the adjustment to earnings and profits for a redemption that is treated as an exchange under section 302(a) or 303(a).

(2) *Reorganizations.* An S corporation acquiring the assets of another S corporation in a transaction to which section 381(a)(2) applies will succeed to and merge its AAA with the AAA of the distributor or transferor S corporation as of the close of the date of distribution or transfer. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAAs of the corporations prior to the transaction.

(3) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation with accumulated earnings and profits transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, the AAA of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation in a manner similar to the manner in which the earnings and profits of the distributing corporation are allocated under section 312(h). See § 1.312–10(a).

(e) *Election to terminate year under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of termination of a shareholder's interest) or § 1.1368–1(g)(2) (to terminate the year in the case of disposition of substantial amounts of stock), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminated his or her interest in the corporation or makes a substantial disposition of stock, whichever the case may be.

§ 1.1368–3 Examples.

The principles of §§ 1.1368–1 and 1.1368–2 are illustrated by the examples below. In each example Corporation S is a calendar year corporation:

Example 1. Distributions by S corporations without C corporation earnings and profits. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 1996, the first day of its 1996 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of $1 per share as of that date. On March 1, 1996, S makes a distribution of $38 to A. For S's 1996 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $50 and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) through (D) (relating to decreases in basis of stock for items other than distributions) is $26.

(ii) Under section 1368(d)(1) and § 1.1368–1(e)(1), the adjustments to the basis of A's stock in S described in section 1367 are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is $3.40 ($1 + [$50 − $26] / 10 shares) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367–1(c)(3), the amount of the distribution that is attributable to each share of A's stock is $3.80 ($38 distribution/10 shares). However, A only has a basis of $3.40 in each share, and basis may not be reduced below zero. Therefore, the basis of each share of his stock is reduced by $3.40 to zero, and the remainder of the distribution ($4.00) is treated as gain from the sale or exchange of property. As of January 1, 1997, A has a basis of $0 in his shares of S stock.

Example 2. Distributions by S corporations with C corporation earnings and profits. (i) B, an individual, organizes Corporation S, a C corporation, on January 1, 1995. B transfers $100 to S in exchange for 10 shares of S's stock, representing all of S's outstanding shares. Thus, B's basis in each share of stock is equal to $10. In addition, B lends $30 to S evidenced by a demand note. For its 1995 taxable year, S does not elect to be an S corporation. S's accumulated earnings and profits as of December 31, 1995, are $40. S properly elects to be an S corporation for its taxable year beginning January 1, 1996.

(ii) During 1996, S has a loss of $150. S makes no distributions to B during 1996. Under section 1366(d)(1), B is allowed a loss equal to $130, the amount equal to the sum of B's bases in his shares of stock and his basis

in the debt. Under section 1367, the loss reduces B's adjusted basis in his stock and debt to $0. Under § 1.1368–2(a)(3), S's AAA as of December 31, 1996, has a deficit of $150 as a result of S's loss for the year.

(iii) For 1997, S has $240 of income, of which $60 is interest from tax-exempt bonds. During 1997, S distributes $110 to B. For 1997, B is allocated $240 of S's 1997 income and the $20 of loss from 1996 (which is treated as incurred by S with respect to B in 1997 under section 1366(d)(2)). Under § 1.1367–2(c), there is a net increase of $220 with respect to B. Thus, B's basis in the loan is fully restored to $30, and B's basis in the S stock (before taking the distribution into account) is increased from zero to $19 per share ([$220 − $30]/10). The AAA (−$150 from 1996) is first increased by $180 to $30 under § 1.1368–2(a)(2) for items of income. (The $60 of tax-exempt income does not increase the AAA.) The AAA is decreased by $30 to zero under § 1.1368–2(a)(3)(iii) for the portion of the $110 distribution that is treated as being from the AAA. The $80 remainder of the distribution is considered a dividend to B to the extent of S's $40 of earnings and profits, and finally as a $40 reduction of B's basis in the S stock. Thus, B's basis in the S stock as of December 31, 1997, is $12 per share ($190 − $70) (portion of distribution that is not a dividend/10 shares). The balance in the AAA is $0, S's earnings and profits is $0, and B's basis in the loan is $30.

Example 3. Election in case of disposition of substantial amount of stock. (i) Corporation S has earnings and profits of $3,000 and a balance in the AAA of $1,000 on January 1, 1997. C, an individual and the sole shareholder of Corporation S, has 100 shares of S stock with a basis of $10 per share. On July 3, 1997, C sells 50 shares of his S stock to D, an individual, for $250. For 1997, S has taxable income of $1,000, of which $500 was earned on or before July 3, 1997, and $500 earned after July 3, 1997. During its 1997 taxable year, S makes the following distributions:

(1) $1,000 to C on February 1; and

(2) $1,000 to each of C and D on August 1.

S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA. S makes the election under § 1.1368–1(g)(2) to treat its taxable year as if it consisted of separate taxable years, the first of which ends at the close of July 3, 1997, the date of the qualifying disposition.

(ii) Under section § 1.1368–1(g)(2), for the period ending on July 3, 1997, S's AAA is $500 ($1,000 (AAA as of January 1, 1997) + $500 (income earned from January 1, 1997 through July 3, 1997) − $1,000 (distribution made on February 1, 1997)). C's bases in his shares of stock is decreased to $5 per share ($10 (original basis) + $5 (increase per share for income) − $10 (decrease per share for distribution)).

(iii) The AAA is adjusted at the end of the taxable year for the period July 4 through December 31, 1997. It is increased from $500 (AAA as of the close of July 3, 1997) to $1,000 for the income earned during this period and is decreased by $1,000, the portion of the distribution ($2,000 in total) made to C and D on August 1 that does not exceed the AAA. The $1,000 portion of the distribution that remains after the AAA is reduced to zero is attributable to earnings and profits. Therefore C and D each have a dividend of $500, which does not affect their basis or S's AAA. The earnings and profits account is reduced from $3,000 to $2,000.

(iv) As of December 31, 1997, C and D have bases in their shares of stock of zero ($5 (basis as of July 4) + $5 ($500 income/100 shares) − $10 ($1,000 distribution/100 shares)). C and D each will report $500 as dividend income, which does not affect their basis or S's AAA.

Example 4. Election to distribute earnings and profits first. (i) Corporation S has been a calendar year C corporation since 1975. For 1982, S elects for the first time to be taxed under subchapter S, and during 1982 has $60 of earnings and profits. As of December 31, 1995, S has an AAA of $10 and earnings and profits of $160, consisting of $100 of subchapter C earnings and profits and $60 of subchapter S earnings and profits. For 1996, S has $200 of taxable income and the AAA is increased to $210 (before taking distributions into account). During 1996, S distributes $240 to its shareholders. With its 1996 tax return, S properly elects under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) Because S elected to distribute its earnings and profits before its AAA, the first $100 of the distribution is characterized as a distribution from subchapter C earnings and profits; the next $60 of the distribution is characterized as a distribution from subchapter S earnings and profits. Because $160 of the distribution is from earnings and profits, the shareholders of S have a $160 dividend. The remaining $80 of the distribution is a distribution from S's AAA and is treated by the shareholders as a return of capital or gain from the sale or exchange of property, as appropriate, under § 1.1368–1(d)(1). S's AAA, as of December 31, 1996, equals $130 ($210–$80).

Example 5. Distributions in excess of the AAA. (i) On January 1, 1995, Corporation S has $40 of earnings and profits and a balance in the AAA of $100. S has two shareholders, E and F, each of whom own 50 shares of S's stock. For 1995, S has taxable income of $50, which increases the AAA to $150 as of December 31, 1995 (before taking into account distributions made during 1995). On February 1, 1995, S distributes $60 to each shareholder. On September 1, 1995, S distributes $30 to each shareholder. S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The sum of the distributions exceed S's AAA. Therefore, under § 1.1368–2(b), a portion of S's $150 balance in the AAA as of December 31, 1995, is allocated to each of the February 1 and September 1 distributions based on the respective sizes of the distributions. Accordingly, S must allocate $100 ($150 (AAA) x ($120 (February 1 distribution)/$180 (the sum of the distributions))) of the AAA to the February 1 distribution, and $50 ($150 x $60/$180)) to the September 1 distribution. The portions of the distributions to which the AAA is allocated are treated by the shareholder as a return of capital or gain from the sale or exchange of property, as appropriate. The remainder of the two distributions is treated as a dividend to the extent that it does not exceed S's earnings and profits. E and F must each report $10 of dividend income for the February 1 distribution. For the September 1 distribution, E and F must each report $5 of dividend income.

§ 1.1368–4 Effective date.

Regulations §§ 1.1368–1, 1.1368–2 and 1.1368–3 apply to taxable years of the corporation beginning after the date the final regulations are published in the **Federal Register.**

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92–13262 Filed 6–8–92; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–71]

RIN 1218–AA98

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of informal public hearing; reopening of written comment period.

SUMMARY: This notice schedules informal public hearings concerning OSHA's proposal (56 FR 57036, November 7, 1991) to modify the existing provisions for controlling employee exposure to methylene chloride. The Agency requests that interested parties present testimony and evidence regarding the issues raised by the proposed standard and by this hearing notice. In addition, this notice reopens the rulemaking record so OSHA can receive additional comments regarding the proposed rule.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: September 16, 1992
San Francisco, CA: October 14, 1992

Notices of intention to appear at the informal public hearings must be postmarked by August 24, 1992.

Testimony and all evidence which will be introduced into the hearing record must be postmarked by August

24, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing.

Comments must be postmarked by August 24, 1992.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Comments are to be submitted in quardruplicate to: The Docket Office, Docket No. H–71, room N–2634, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone No. (202) 523–7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523–5046, provided that the original and three copies of the comment are sent to the Docket Officer thereafter.

The locations of the informal public hearings are as follows:

Washington, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210

San Francisco, CA: The Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA, 94108; (415) 433–6600

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523-8151

SUPPLEMENTARY INFORMATION: On November 7, 1991, OSHA proposed to amend its existing regulation for employee exposure to Methylene Chloride (MC), so that the permissible exposure limits (PELs) would appropriately reflect the available animal and human data. The Agency proposed to reduce the permissible 8-hour time-weighted average (TWA) exposure from 500 parts per million (ppm) to 25 ppm. In addition, OSHA proposed to delete the existing ceiling limit concentration of 1000 ppm and to reduce the short-term exposure limit (STEL) from 2,000 ppm (measured over 5 minutes in any 2 hours as a maximum peak concentration) to 125 ppm, measured as a 15-minute TWA.

The proposal also set requirements for exposure control, personal protective equipment, employee exposure monitoring, training medical surveillance, hazard communication, regulated areas, emergency procedures and recordkeeping. In order to minimize the compliance burdens of employers whose employees have consistently low exposures to MC, the Agency has proposed an "action level" of 12.5 ppm, measured as an 8-hour TWA.

The Agency developed the MC proposal using information generated by OSHA and other agencies, as well as the comments received in response to an Advance Notice of Proposed Rulemaking (ANPR) published on November 24, 1986 (51 FR 42257). The NPRM presented 48 issues regarding which OSHA sought information and comments. In particular, the Agency requested input on the preliminary quantitative risk assessment, the feasibility of engineering controls to protect employees from excessive MC exposure, and the anticipated impacts of the proposed rule on the affected industries.

At the time the NPRM was published, the Agency had not yet consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the application of the proposed rule to the construction industry because the Committee's members, whose terms expired in June 1990, had not yet been reappointed or replaced. OSHA stated (56 FR 57115–16) that the NPRM for MC provides the necessary rationale for regulatory action and sets out the requirements needed to protect employees in all industries, including construction, from the health hazards associated with occupational exposure to MC.

OSHA set a 5-month comment period, ending on April 6, 1992, to facilitate public response to the NPRM. In response to the proposed rule, OSHA has received 58 written comments (Exs. 19–1 through 19–58). Those comments raised a number of serious concerns regarding the provisions of the proposed rule and OSHA's preliminary conclusions about MC-related health effects and the means by which employee exposure would be controlled. In addition, several commenters (Exs. 19–18, 19–22, 19–23, 19–38 and 19–45) requested that OSHA convene informal public hearings to address their concerns. These comments are available for inspection and copying in the OSHA Docket Office, Docket no. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

OSHA is issuing a hearing notice at this time to give the public the greatest opportunity to consider and address the hearing issues. The Advisory Committee on Construction Safety and Health was reconstituted on May 4, 1992 (57 FR 19139) and held its first meeting on May 19–20, 1992. The Committee established a working group on methylene chloride to consider the information provided by OSHA and to develop further information for consideration by the full Committee, which is scheduled to make its formal recommendations at the next meeting, on July 28–29, 1992.

OSHA expects to issue a supplemental notice that reflects the Committee's recommendations. If the Agency determines, after completing consultation with the ACCSH, that revisions to the proposed rule are needed for the construction industry, the supplemental notice would function as an amended proposal. That notice would also reopen the written comment period for the limited purpose of receiving comments and information concerning any issues or proposed revisions that arise from consultation with the Committee. The Committee's recommendations and any public input regarding those recommendations would be considered by the Agency in the course of drafting the final rule.

Accordingly, pursuant to section 6(b)(3) of the OSH Act, the Agency has scheduled informal public hearings to begin on September 16, 1992 in Washington, DC and on October 14, 1992 in San Francisco, CA. In addition, OSHA has decided to reopen the written comment period for this rulemaking. This will enable interested persons to submit information and suggestions regarding the NPRM and the issues raised in this hearing notice even if they do not participate in the informal public hearings.

Through these hearings, OSHA expects to obtain testimony and other information pertinent to the issues which were raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, the Agency solicits testimony, with supporting information, on the issues presented below.

Issue 1

As discussed in the Preliminary Quantitative Risk Assessment (section VIII of the NPRM) and in Issue 6 of the NPRM, OSHA has based its preliminary estimate of human cancer risk on the NTP mouse study. There has been a considerable amount of research and analysis aimed at identifying the mechanism by which MC caused cancer

in mice. Researchers have generated pharmacokinetic data for mice, hamsters, rats and humans to characterize the differences in MC metabolism across species. Mice were observed to metabolize MC to the putative carcinogen (glutathione-S-transferase metabolite) at the highest rate. Based on those studies, researchers have theorized that mice would be more susceptible to MC-induced cancer and, therefore, direct extrapolation from the NTP study, without incorporation of pharmacokinetic factors, would not provide a valid basis for estimating human cancer risk (such as exs. 7–125, 7–126, 7–128, 7–147, 8–14d, 10–39, 19–45).

OSHA expressed serious concerns regarding the appropriate use of the above-cited pharmacokinetic data in Issue 6 of the NPRM. That Issue presented several questions intended to elicit information that would assist the Agency in determining what use could be made of the pharmacokinetic data.

In response to the NPRM, several commenters discussed the pharmacokinetic data and the implications of using this data to adjust OSHA's risk estimates (exs. 19–17, 19–28, 19–45, 19–46, 19–48, and 19–57). Some commenters (ex. 19–28, 19–45, 19–48 and 19–57) have stated that the Reitz and Andersen physiologically-based pharmacokinetic model is a plausible representation of the metabolism of MC and, accordingly, that it should be used in the risk assessment process. NIOSH (ex. 19–46), on the other hand, stated that significant questions regarding the mechanism of action of MC still remain and that those questions should be resolved before OSHA uses the pharmacokinetic model to adjust risk estimates. Based on its review of the comments, OSHA has determined that it is appropriate to solicit testimony, with supporting documentation, regarding the utility of pharmacokinetics data, through a reprise of the questions that appeared in Issue 6 of the NPRM, as follows:

a. How can pharmacokinetics be best applied to the risk assessment of MC and what are the current limitations of this approach in the quantification of health risks? What weight should OSHA give to pharmacokinetic data in its risk assessments and why?

b. Given that five separate risk assessments have utilized the pharmacokinetic models for MC in five different ways (resulting in from 0 to 170 fold reduction in the final risk when compared with assessments not utilizing pharmacokinetic data), how can OSHA best utilize the existing pharmacokinetic data and still be certain of protecting worker health?

c. Which parameters in the pharmacokinetic models are most sensitive to errors in measurement or estimation? Can an increased database reduce the uncertainties in these parameters?

d. How much confidence can be placed in the human *in vitro* MC metabolism data, especially that for lung tissue? How will human variability in these parameters affect the extrapolation of risk from rodent species?

e. Are there any studies in progress which attempt to verify the predictive ability of the model *in vivo*, (i.e., by giving doses in a lifetime bioassay which will produce cancer in a species other than the B6C3F$_1$ mouse and the F344 and Sprague-Dawley rats)?

f. OSHA recognizes the large areas of uncertainty which exist in applied dose risk assessment procedures. If pharmacokinetic modeling reduces these uncertainties, can the reduction in uncertainty be quantified? Are additional uncertainties introduced into the risk assessment process by the use of pharmacokinetic models?

g. By using the pharmacokinetic models in the risk assessment process, one is making an assumption about the carcinogenic mechanism of action of MC. Are there any new studies on the carcinogenic mechanism of action of MC which would support or refute this assumption?

h. OSHA solicits information supporting or refuting the assumption that the MC metabolite(s) from the GST pathway is (are) responsible for its carcinogenic action. If the carcinogenic process is, in fact, not the result of the metabolite(s) from the GST pathway alone, but is due to a combination of metabolites or a combination of the parent compound plus the metabolites, how would the pharmacokinetic model and the subsequent risk assessments be affected? Can these effects be quantified?

i. One of the assumptions made in the pharmacokinetic model is that the target tissues for MC are liver and lung. Can this model predict cancer incidences at other sites? If not, is there a way to factor in consideration of possible MC-induced human cancers at other sites than liver and lung?

j. OSHA solicits information supporting or refuting interspecies allometric scaling based on body weight or body surface area.

Issue 2

In response to the NPRM, several commenters discussed the epidemiological evidence. Kodak (ex. 19–18), NIOSH (ex. 19–46) and Dr. Carl Shy (ex. 19–41) had extensive comments on the comparison of the epidemiological data with animal bioassay data used to predict human risks. There was also discussion of the significance of the increased incidence of biliary cancers in the Hoechst-Celanese study, and whether they warranted being labelled as "suggestive evidence of a positive effect." For example, Dr. Shy stated that . . . "at the present time, there is no direct human evidence that MC increases the risk of cancer in exposed workers." Dr. Shy also stated that "[G]iven the many uncertainties in extrapolating from animal bioassay results to risks at low doses in humans . . . I believe that the non-positive human data do not justify any conclusion that the epidemiological results are consistent with positive risk estimates based on the animal studies." Accordingly, Dr. Shy disagreed with the Agency's decision to use the human studies to calculate the upper confidence limits on human risk.

In addition, NIOSH (ex. 19–46) stated that evaluation of the results of the epidemiology studies could have missed increased mortality related to the acute effects of MC on the heart among physically active employees who were exposed to MC, because the mortality experiences of workers during acute exposures to MC were not examined. NIOSH suggested that OSHA consider the possibility that increases in mortality may occur during short-term acute exposure to MC (such as 125 ppm for a 15-minute period). Based on its review of the comments regarding the MC epidemiological data, OSHA solicits testimony, with supporting documentation, on the following issues:

a. There is controversy regarding how OSHA should compare results from epidemiological mortality studies with those from rodent bioassays. For MC, two different methods have been used to determine whether upper bounds on risk estimates derived from the epidemiology are consistent with the rodent bioassay risk estimates (exs. 7–77 and 7–249). Investigators using these two methods have reached very different conclusions as to the consistency of the human and animal data.

NIOSH has summarized the two methods that have been used to compare the results of animal and human studies (ex. 19–46) as follows:

Hearne et al. [1987] (ex. 7–77) used a linearized multistage model developed by EPA to compute the number of liver and lung cancer deaths expected in their epidemiologic study. Adjustments were made in this analysis accounting for the discontinuous exposures and less than lifetime follow-up of the workers. The number of deaths predicted based on this model were significantly greater than the number observed in the epidemiologic study, which led Hearne et al. to conclude that the model based on the animal bioassay substantially overestimated cancer mortality for these sites. Tollefson et al. [1990] (ex. 7–249) used an approach based on statistical power to compare the consistency between the animal bioassay-based models and the epidemiologic results from Hearne et al. Tollefson et al. computed the expected number of deaths and corresponding relative risk based on the animal-based model using correction factors that were similar to those used by Hearne et al. They then computed the statistical power of the epidemiologic study to detect the expected relative risk which was 0.50. A statistical power of at least 0.80 is generally

considered adequate for epidemiologic studies. Thus, Tollefson et al. concluded that the epidemiologic study had insufficient power and that the results from the epidemiologic study do not refute the results from the animal bioassay-based model.

The Agency solicits testimony and supporting information concerning methods for comparing results of rodent cancer bioassays and epidemiological studies. What are the relative merits of these methods for comparing the results of rodent cancer bioassays and epidemiological studies? What other methods can be used to compare these results?

b. The Health Effects section of the NPRM presents a discussion of MC cardiac toxicity (56 FR 57081–82). MC is metabolized in humans to carbon dioxide and carbon monoxide (CO). Workers with silent or symptomatic heart disease (or with exacerbating exposure to CO, such as those from smoking or combustion sources) may be especially susceptible to the cardiac toxicity of MC or MC metabolites. NIOSH (ex. 19–46) stated:

> Because exposure to MC induces the formation of COHb, it is possible that the increased ischemic heart disease risk associated with MC exposure is transitory and would, therefore, only be observed among actively exposed workers. Unfortunately, none of the [epidemiological] studies have analyzed the risk of ischemic heart disease among workers during the period when they were actively exposed to MC. Such analyses could and need to be performed on these studies.

The Agency is concerned that total observed mortality from heart disease, which does not account for the employment status of each case, may not show the postulated effects of acute MC exposures on cardiovascular risk. Therefore, OSHA is requesting testimony, with supporting information, regarding the incidence of heart disease concurrent with MC exposures. Particularly, OSHA is interested in obtaining this information for the cohorts in which mortality studies have been completed.

c. Please submit any additional or updated epidemiological studies or updated information on exposures for the employee populations in the studies OSHA included in the NPRM.

Issue 3

A commenter (ex. 19–16) has indicated that state-of-the-art vapor degreasers are now equipped with a super-heated vapor zone which eliminates drag-out of MC. What MC emission control systems have been developed for other segments of the metal cleaning industry? OSHA is interested in information about any feasible engineering and work practice controls which can be used in degreasing operations. Therefore, OSHA solicits testimony and supporting information regarding the specifications of any such systems, including operating parameters, and any exposure data that has been collected during their use.

Issue 4

Several commenters (such as exs. 19–11, 19–31 and 19–45) stated that there are situations where ventilation systems are already in place and where it would be infeasible to increase local exhaust ventilation to further control MC emissions. Those commenters stated that increased air flow in the workplace would increase the volume of MC required for operations and would increase the amount of MC emitted to the atmosphere, resulting in increased material costs and facility heating costs and in greater difficulty regarding compliance with any Clean Air Act-mandated emission limits. OSHA notes that ventilation systems constitute the primary means by which the Agency expects employers to control MC exposure. Accordingly, OSHA requests testimony, with supporting information, regarding the following questions:

a. What is the rate at which MC is lost when ventilation systems are in operation during a typical workshift at particular workplaces?

b. How do variations in ventilation rates and system designs affect the rate of MC emissions?

c. To what extent can employers rely on portable ventilation systems, as opposed to systems permanently installed in the workplace structure, for control of MC exposure?

d. To what extent can MC-loss be eliminated or minimized through recapture systems?

e. To what extent can MC-containing products be reformulated (such as through the addition of paraffins to paint strippers) to reduce evaporation of MC?

f. What are the impacts of MC-loss and loss-control efforts on the safety and efficiency (measured in terms of dollar cost, time required, and quality of product) of MC-using operations?

Issue 5

OSHA is aware that there are products and processes which can replace MC use in certain situations. As explained in the NPRM (56 FR 57045–57053), there are some applications such as paint stripping, coffee decaffeination and ink formulation, where employers have partially or completely eliminated MC use. In particular, high pressure water, dry ice and sodium bicarbonate blasting have been suggested as alternatives to MC for paint stripping of aircraft, ship hulls, automobiles and for other coating removal applications. The Agency requests testimony, with supporting information, on these and other alternatives to MC use, with regard to their technological and economic feasibillity. Please submit testimony, with supporting information, on the anticipated availablity, costs, effectiveness, applicability and possible hazards or disadvantages of using substitutes for MC.

Issue 6

Comments in response to the NPRM have indicated that MC is currently used in pesticides (ex. 19–58), particularly in wasp and hornet sprays. OSHA solicits testimony, with supporting information, on the extent to which MC is used during the formulation of pesticides (either as an ingredient or for other purposes), the exposure levels experienced during manufacture or use of these pesticides and any engineering or work practice controls which are successful in reducing exposure to MC. In addition, please submit testimony, with supporting information, regarding substitutes for MC in pesticide manufacturing or use.

Issue 7

In response to the NPRM, the Paint Remover Manufacturer's Association (PRMA) stated (ex. 19–11, p. 42):

> The cost of regulation [as estimated by OSHA] does not include the increase in operating costs due to substitution. The best available substitutes vary in cost from 4 to 6 times the current cost per 55 gallon drum of MC paint remover. The substitutes average four times as long to work compared to MC. This greatly increases operational costs and results in loss of production. The current best available substitutes will only remove 8 of the 32 most common household coatings. Even if the industry can double the removable coatings for the substitutes, at least 50% of known coatings cannot be removed.

OSHA is concerned about the issues raised by the PRMA and by the supporting information presented in the Appendices to the PRMA comment (ex. 19–11H). Therefore, the Agency solicits testimony, with supporting information, regarding the following questions:

a. What coatings are used by furniture manufacturers or refinishers?

b. What coatings can be stripped without using MC-containing products?

c. Which coatings can be removed using stripping agents that contain N-methylpyrrolidone instead of MC?

d. Which coatings can be removed using stripping agents that contain dibasic esters instead of MC?

e. What other alternative ingredients for furniture stripping products are available?

What are the costs, effectiveness and safety of any such ingredients?

f. To what extent do the costs of using non-MC stripping agents to strip particular pieces of furniture differ from the costs of using MC-containing strippers? What cost factors account for any such differences?

g. What percentage of the furniture handled in a furniture refinishing shop would be finished with the 8 "most common household coatings"?

h. To what extent is it feasible to use more than one substitute for MC during a single stripping job, in order to improve the efficiency of the paint removal process? Please provide examples of any cases where alternative ingredients have been used in tandem to remove coatings and describe the stripping processes used.

Issue 8

The NPRM requested (issue 25) information regarding the impact of the proposed rule on small business. Some commenters responded that small businesses would experience very adverse affects. For example, the Paint Remover Manufacturer's Association (PRMA) (ex. 19–11, pp. 18–20) commented that furniture refinishing businesses, most of which are small businesses, would be adversely affected by the proposed rule. In particular, the PRMA has apparently assumed that the promulgation of the proposed rule would prevent the use of MC in furniture stripping. Therefore, the PRMA expressed concern that appropriate substitutes for MC were not available and stated that those chemical substitutes which have been used to strip furniture cost 300 percent more than MC-based chemicals. The PRMA stated:

> This will undoubtedly prevent the recycling (refinishing) of common household furniture, leaving only valuable antiques within the refinishing range. This would have a serious environmental impact since with methylene chloride paint removers, furniture can be refinished with a less than 10 percent environmental impact as compared with constructing new.

As indicated by issue 7, above, there are serious questions regarding the extent to which substitution will be a major factor in the efforts of the furniture refinishing industry to achieve compliance with the proposed rule. OSHA has anticipated that most refinishers would comply with the proposed PELs through improved engineering and work practice controls. Based on the PRMA comment, the Agency is interested in obtaining additional information regarding the impacts of the proposed rule on small businesses, such as the smaller furniture refinishing operations.

Therefore, OSHA solicits testimony, with supporting documentation, regarding the following questions:

a. What is the likelihood that the amount and types of furniture refinished would be reduced if OSHA promulgated the proposed rule?

b. What constitutes "common household furniture" as distinct from "antiques"?

c. What percentage of the furniture refinished is such furniture?

d. To what extent does the furniture refinishing industry rely on the refinishing of common household furniture for its financial wellbeing?

e. What changes in the work practices of furniture refinishers would mitigate the impacts predicted by the PRMA?

f. To what extent have furniture refinishers been able to offset increased costs through higher prices?

g. To what extent would small businesses in other industries that use MC be impacted by the proposed rule? Please describe any anticipated changes in the operations of those small businesses that would result from efforts to comply with the proposed rule.

h. How many small businesses would be impacted by the proposed standard?

i. With which provisions would small establishments most encounter difficulties when attempting to comply? How could the proposed requirements be altered or simplified to help small entities comply, while affording comparable protection for their employees?

j. What timetable would allow small businesses sufficient time to comply with the proposed standard?

Also, the Halogenated Solvents Industry Alliance, Inc. (HSIA) commented (ex. 19–45A, pp. 84–87) that OSHA had significantly underestimated the impact of the proposal on small businesses, such as furniture refinishers. In particular, the HSIA stated that the Agency had underestimated: (1) The number of furniture strippers who used MC-based strippers (the number of firms affected by the proposal); (2) regional variation in the extent to which refinishers could use substitutes for MC (flammability is less of a concern in southern cities where MC can be used in outdoor setting); (3) and the cost of compliance with the proposed rule. OSHA solicits testimony, with supporting information, regarding the concerns raised by the HSIA. To what extent do those concerns accurately reflect conditions in the furniture refinishing industry? To what extent do those concerns reflect conditions in other MC-using industries where there are a number of small businesses?

In addition, the Agency is interested in receiving testimony, with supporting information, regarding any cost and process-related data that distinguished those furniture stripping operations which already use substitutes for MC from those operations which use MC-based chemicals. What considerations should furniture refinishers take into account when they choose between switching to substitutes and implementing or maintaining the engineering and work practice controls needed to achieve compliance with the proposed PELs?

Issue 9

The NPRM (56 FR 57044–57070) discussed the industries where MC is used and the measures available to control MC exposure. Based on OSHA's interest in basing its regulations on the best available information, the Agency believes that additional information related to MC use and exposure would be useful. In particular, OSHA is interested in information about any use of MC in food extraction, longshoring, and agriculture. Also, commenters from the pharmaceutical (ex. 19–25), furniture and industrial paint stripping (ex. 19–21, 19–23), foam blowing (ex. 19–39), shipyard (ex. 19–56) and construction (ex. 19–36) industries expressed concerns regarding the NPRM coverage of MC use and exposure in those industries. Therefore, OSHA solicits testimony, with supporting documentation, regarding the following questions:

a. What are the processes or products in which MC is used?

b. How many establishments in a particular industry, or what percentage of such establishments, use MC?

c. What means are used to recover and recycle MC in particular industries?

d. What volume, or percentage of the volume, of MC used in particular industries is recovered and recycled?

e. How many employees are exposed to MC in particular industries or types of operations?

f. What are the exposure levels for employees in particular industries or operations, measured either over a work shift or during short-term exposures?

g. What engineering or work practice controls are used to protect employees from MC exposure?

h. To what extent are MC-exposed employees in particular industries provided with personal protective equipment (PPE)?

i. What costs are associated with the provision of engineering controls, work practice controls and PPE to MC-exposed employees in particular industries?

Issue 10

As discussed above and in the NPRM (56 FR 57115–16), the Agency must satisfy requirements for consultation with the ACCSH regarding proposed regulatory action that covers the construction industry. Therefore, when the ACCSH was reconstituted (57 FR

19139), OSHA presented the proposed regulatory text, with background materials, to the ACCSH for its recommendations. On May 19, 1992 the Committee voted to set up a work group that would gather information to be used by the full Committee in making its formal recommendations at the next meeting, scheduled for July 28–29, 1992.

The Agency is interested in obtaining additional information regarding any special difficulties that the construction industry may face in complying with the MC proposed rule. In particular, OSHA is interested in learning about any construction-specific problems associated with respirator use and medical surveillance, and in obtaining information on workplaces where construction workers are exposed to MC. Accordingly, OSHA requests testimony, with supporting information, regarding the following questions:

a. In which jobs are construction workers exposed to MC? Are there specific trades where exposure is particularly significant? What data are available on the amount of time employees spend on projects where employees are exposed to MC?

b. To what extent are exposure data available for construction workers exposed to MC? How often do employers monitor for MC at construction worksites? What exposure levels have been detected?

c. What engineering controls, work practices and personal protective equipment have been used to protect construction workers from MC exposure?

d. To what extent do circumstances specific to the construction industry determine the level or type of MC exposures and the feasibility of reducing those exposures?

e. Are there employee exposures to MC in confined spaces or other areas of particular concern? What engineering controls have been (or could be) implemented in these areas? Are there any circumstances which would limit air-supplied respirator use or make such use impractical in these areas?

f. To what extent would the construction industry encounter special problems in complying with requirements for medical surveillance and exposure monitoring? If so, what problems would be encountered?

g. To what extent can the construction industry substitute other materials or processes for MC?

h. Which construction employees currently wear respirators for protection from MC exposure? How many? What percentage of the work force? What types of respirators are used?

i. What changes would be introduced in construction worksites or work practices in order to comply with an 8-hour TWA PEL of 25 ppm? How would these changes impact overall work operations? Job costs?

j. Do construction workers, in general, know the dangers associated with exposure to MC?

Issue 11

In response to a request from OSHA, NIOSH has performed a study to determine the breakthrough characteristics of organic vapor cartridges and canisters for MC (ex. 46–D). OSHA solicits testimony, with supporting information, regarding this study and requests any other data on MC breakthrough of air-purifying respirators (including data on media other than activated charcoal).

Issue 12

Several commenters (ex. 19–17, 19–22, 19–23 and 19–36) stated that compliance with the proposed 25 ppm 8-hour time-weighted-average (TWA) permissible exposure limit (PEL) may not adequately protect employees from significant risks of material impairment of health. OSHA solicits testimony, with supporting information, regarding the suggestions that the health effects and feasibility data support lowering the 8-hour TWA below 25 ppm. What 8-hour TWA PEL is needed to protect employees from MC hazards? What 15-minute STEL is needed to supplement the protection afforded by compliance with the recommended 8-hour TWA PEL? Please submit any data on health effects, risk assessment and technological or economic feasibility supporting your recommendations.

Issue 13

OSHA has proposed to require compliance with the provisions of this standard within 180 days of the effective date of this standard, except for initial monitoring and engineering controls, which should be completed within 120 days and one year of the effective date, respectively. The Agency solicits evidence regarding the reasonableness of these dates for purposes of complying with the standard. If problems are anticipated for particular industries to comply with the proposed effective dates, please explain why the dates should be extended and indicate the minimum time necessary for compliance.

Issue 14

How would the proposed standard affect industry's economic position, particularly with regard to foreign competition in the U.S. market and the price of U.S. goods for export?

Issue 15

The MC record includes copies of OSHA's Preliminary Regulatory Impact Analysis and reports on studies conducted for OSHA by CONSAD Research Corporation entitled "Economic Analysis of OSHA's Proposed Standards for Methylene Chloride" (1990) (ex. 15) and "Economic Analysis of OSHA's Proposed Standards for Methylene Chloride in the Construction and Shipbuilding Industries" (1991) (ex. 15c). OSHA solicits testimony, with supporting information, regarding these analyses.

Issue 16

Please provide any information available on potentially significant (negative or positive) environmental effects that may occur as a result of the proposed standard.

Persons interested in participating in the hearing should refer to the notice of proposed rulemaking on Occupational Exposure to Methylene Chloride (56 FR 57036) for the text of the proposed standard and a more thorough discussion of issues related to this proceeding.

Public Participation-Notice of Hearing

Pursuant to section 6(b) of the Act, an opportunity to submit oral testimony concerning the issues raised by this notice will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on September 16, 1992 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210 and at 9:30 a.m. on October 14, 1992 in the Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108.

Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before August 24, 1992, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H–71, room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523–8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523–5986, provided the original and 3 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by August 21, 1992 for the DC hearing and September 22, 1992 for the San Francisco hearing. These materials will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment during the oral testimony, must submit a request for such equipment in the Notice of Intent to Appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on September 16, 1992 in Washington, DC. An additional hearing will convene at 9:30 a.m. on October 14, 1992 in San Francisco. At those times, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentation to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked on or before August 24, 1992, and submitted in quadruplicate to the Docket Officer, Docket No. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to 202–523–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address.

All timely written submissions will be made a part of the record of the proceeding.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, on this 1st day of June, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–13397 Filed 6–8–92; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 92–051]

Safety Zone: Bristol Harbor, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in Bristol Harbor, Bristol, RI, during the Bristol Fourth of July fireworks display. The safety zone will be established within a 350 yard radius around the fireworks barge anchored in the harbor. This safety zone is necessary to protect pleasure/spectator craft and personnel aboard the vessels from injury due to potential hazards associated with the fireworks.

DATES: Comments must be received on or before June 24, 1992.

ADDRESSES: Comments should be mailed to the Commanding Officer, Marine Safety Office Providence, John O'Pastore Federal Building, Providence, RI, 02903–1790, or may be delivered to room 217 at the above address between 7:30 a.m. and 4 p.m., Monday through

Friday, except federal holidays. The telephone number is (401) 528–5335. The Marine Safety Office maintains a public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 217, Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Tina Burke, Marine Safety Office Providence, (401) 528–5335.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD1 92–051) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LTJG T. Burke, Project Manager, and LCDR J. Astley, Project Counsel, District Legal Office.

Background and Purpose

On July 4, 1992, the Bristol fourth of July Committee plans to sponsor a Fourth of July fireworks display between the hours of 9 p.m. and 11 p.m. The fireworks will be launched from a barge anchored in Bristol Harbor, approximate position 41–39–55N, 71–16–59W, 350 yards due west of the Coast Guard Aids to navigation station. The sponsor notified the Coast Guard of this event on April 30, 1992. Approximately 500 spectator vessels are expected to attend the event. The fireworks display is necessary to allow the communities of Bristol and surrounding areas, as well as other public interests, to celebrate Independence Day.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of Bristol Harbor over which the fireworks will be launched, in order to protect these vessels from personal injury, fire, or other damage as a result of stray projectiles and hot/burning falling debris. The Coast Guard proposes to establish this safety zone in the area within a 350 yard radius around the fireworks barge. This zone will be in effect between the hours of 9 p.m. and 11 p.m. on July 4, 1992.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect for only a short period, specifically for two hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as other pleasure craft wishing to transit the area. The vessels wishing to view the fireworks will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Other pleasure craft in the area have alternate areas in Bristol Harbor in which to carry out their recreational activities. Because of this fact, plus the fact that the display will only last a short time, these vessels will not be heavily impacted by the proposed zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **"ADDRESSES"**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under section 2.B.2.C of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES."**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6, and 160.5.

2. Section 165.T01–051 is added to read as follows.

§165.T01–051 Safety Zone: Bristol Harbor, RI.

(a) *Location.* The following area is a safety zone: A 350 yard radius around the fireworks barge anchored in Bristol Harbor, RI, in approximate position 41–39–55N, 71–19–59W.

(b) *Effective date.* The regulation in this section becomes effective at 9:00 p.m. on July 4, 1992. It terminates at 11:00 p.m. on July 4, 1992, unless

terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: June 1, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 92-13347 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF72

Exchange of Evidence; Social Security Administration and Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning the exchange of evidence between the Social Security Administration (SSA) and VA. This proposed amendment is necessary because VA's General Counsel has determined that the wording of the current regulation is overbroad. The intended effect of this amendment is to assure that the regulations accurately reflect the statutory conditions under which evidence received by SSA is also considered evidence received by VA.

DATES: Comments must be received on or before July 9, 1992. Comments will be available for public inspection until July 20, 1992. This amendment is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 20, 1992.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 601 of the Servicemen's and Veterans' Survivor Benefits Act, Public Law No. 881, 70 stat. 857, 886 (1956) added 38 U.S.C. 5105 (formerly 3005) which authorized the Administrator of Veterans Affairs (now the Secretary of Veterans Affairs) and the Secretary of Health, Education, and Welfare (now the Secretary of Health and Human Services (HHS)) to jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing applications for dependency and indemnity compensation (DIC) from VA and benefits under title II of the Social Security Act. That statute also stipulated that an application on such form filed with either VA or the Secretary of HHS would be deemed an application for both benefits, and it provided for transmission of applications and supporting documentation between VA and HHS. The purposes of section 601 were to obviate the necessity for a claimant to file more than one basic application for benefits under the Social Security Act and the DIC program and to avoid, to the maximum feasible extent, the necessity for a claimant to file any particular item of documentary evidence substantiating a claim more than once. VA published regulations at 38 CFR 3.201(a) to put this statutory directive into effect.

The central purpose of § 3.201(a) is to spare claimants the inconvenience of filing duplicate claims or furnishing duplicate evidence. It also establishes the date that the application or evidence is considered to have been received by VA (See 38 CFR 3.156(a), 3.158(a), and 3.400(q)(1)(i)). It is not, however, intended to require that evidence before the SSA be treated as if it were part of the record before VA, or to require that VA affirmatively seek such evidence from SSA in the absence of a request from the claimant, or to apply to claims for any VA benefit other than DIC. In order to prevent claimants and the general public from misconstruing § 3.201(a), we are proposing to amend it for the sake of clarity.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. Sections 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.110)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 26, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.201, paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 3.201 Exchange of evidence; Social Security and Department of Veterans Affairs.

(a) A claimant for dependency and indemnity compensation may elect to furnish to the Department of Veterans Affairs in support of that claim copies of evidence which was previously furnished to the Social Security Administration or to request that the Department of Veterans Affairs obtain such evidence from the Social Security Administration. For the purpose of determining the earliest effective date for payment of dependency and indemnity compensation, such evidence will be deemed to have been received by the Department of Veterans Affairs on the date it was received by the Social Security Administration.

* * * * *

(Authority: 38 U.S.C. 501(a) and 5105)

[FR Doc. 92-13195 Filed 6-8-92; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AF61

Veterans Training; Time Limit for Submitting Employer's Certifications Under the Veterans' Job Training Act

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: Payments under the Veterans' Job Training Act are made to employers only after VA (Department of Veterans Affairs) receives periodic certifications concerning the number of hours worked by the veteran during the period being certified. Since the Act has a sunset provision, all work for which payments are due has been completed. This will serve notice to all employers participating under the Act that VA will not accept any certifications submitted after September 30, 1993.

DATES: Comments must be received on or before July 9, 1992. Comments will be available for public inspection until July 20, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays), until July 20, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Under the Veterans' Job Training Act VA made periodic payments to employers while they trained veterans of the Korean Conflict and the Vietnam Era who had experienced a lengthy period of unemployment. Section 5c of that Act provides that the maximum period of training for which assistance may be provided on behalf of a veteran is 15 months. Section 17 states that assistance may not be paid for a program which begins after March 31, 1990. The effect of the two sections is that the last period of training for which VA may provide assistance ended on June 30, 1991.

VA has provided by regulation (38 CFR 21.4632(c)(3)) that payments will be made only after the employer submits a certification that the veteran's progress during the period was satisfactory and the number of hours the veteran worked during the period. The length of the period may be either a month or a quarter.

Since the purpose of the law was to assist employers who were training veterans while that training was underway, VA believes that those employers should exercise due diligence in submitting the certifications needed to release that assistance. Furthermore, since the last date for training permissible under the VJTA has expired, it is appropriate to provide a reasonable time limit for closing the administration of the program. VA is doing this in this proposal.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Although the amended regulation will affect some small entities, this certification can be made because VA believes that the overwhelming majority of small entities have already submitted all the necessary periodic certifications. The department does not believe that requiring the remainder to submit them before October 1, 1993 will cause a significant economic impact. Therefore, the amended regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.121.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart F-1—Veterans' Job Training

For the reasons set out in the preamble, 38 CFR part 21, subpart F-1 is amended as set forth below.

1. The authority citation for part 21, subpart F-1 continues to read as follows:

Authority: Public Law 98-77, 97 Stat. 443.

2. In § 21.4632 paragraph (c)(4) and its authority citation are added to read as follows:

§ 21.4632 Payment restrictions.

* * * * *

(c) *Release of payments.* * * *

(4) VA will not release any payments for training provided by an employer if VA receives the employer's certification for that training after September 30, 1993.

(Authority: Sec. 8, Pub. L. 98-77, 97 Stat. 443)

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[FR Doc. 92-13196 Filed 6-8-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

[OAQPS No. CA 12-14-5354; FRL-4140-4]

California State Implementation Plan Revision; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (SDCAPCD) on December 18, 1990. The California Air Resources Board (ARB) submitted this revision to EPA on April 5, 1991. The revision concerns Rule 67.15, Pharmaceutical and Cosmetic Manufacturing Operations, which controls the emission of volatile organic compounds (VOCs) from solvents used in the manufacturing of pharmaceuticals

and cosmetics. EPA is proposing to approve this revision under section 110 (k)(3) as meeting the requirements of section 110 (a) and part D of the Clean Air Act, as amended in 1990 (CAA).

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Northern California, Nevada, and Hawaii Rulemaking Section, Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended CAA) that included the San Diego County Air Pollution Control District (APCD). 43 FR 8964; 40 CFR 81.305. Because San Diego was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested and EPA approved under Section 172 of the 1977 Act, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. San Diego did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the San Diego County APCD portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q. In amended section 182 (a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies.

Section 182 (a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. San Diego County APCD has been classified as severe; [2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991 [3], including the rule on which EPA is acting in this notice. This notice addresses EPA's proposed action for SDCAPCD Rule 67.15, Pharmaceutical and Cosmetic Manufacturing Operations. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR Part 51, Appendix V,[4] and is being proposed for approval.

Description of Regulation

San Diego County APCD Rule 67.15 controls the emission of volatile organic compounds (VOC) from the solvents used in the manufacture of pharmaceuticals and cosmetics. VOCs contribute to the production of ground level ozone and smog. Rule 67.15 is a new rule which has been adopted to meet EPA's SIP-Call and the CAA RACT Fix-up requirement. The following is EPA's evaluation and proposed action for SDCAPCD's Rule 67.15.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] San Diego County APCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107 (d) and 181 (a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The State of California submitted an earlier version of SDCAPCD's Rule 67.15 to EPA on March 26, 1990 but that version was superseded by a resubmittal of the rule on April 5, 1991.

[4] EPA has since amended the completeness criteria pursuant to section 110 (k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA, is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for stationary sourcers of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See Section 182 (a)(2)(A). The CTG applicable to Rule 67.15, Pharmaceutical and Cosmetic Manufacturing, is entitled, "Control of Volatile Organic Emissions form the Manufacture of Synthesized Pharmaceutical Products", No. EPA–450/2–78–029. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Summary of the Rule Provisions

Rule 67.15 applies to any person who manufacturers pharmaceutical or cosmetic products, formulates ointments, produces and/or separates medicinal chemicals such as antibiotics and vitamins for micro-organisms, manufactures botanical products by the extraction of organic chemicals from vegetative materials or animal tissues, or formulates pharmaceutical products into various dosage forms such as tablets, capsules or injectable solutions. The following are some of the provisions contained in the rule:

—definitions for the following terms: cosmetic manufacturing plant, cosmetic products, fugitive liquid leaks, fugitive vapor leak, pharmaceutical manufacturing plan, pharmaceutical product, process tanks, and volatile organic compounds.

—reactors, distillation columns, crystallizers, or centrifuges that have emissions of more than 15 pounds a day of VOC must be equipped with a surface condenser.
—control devices other than condensers may be used if they are approved by the Air Pollution Control Officer (APCO) and their combined collection and abatement efficiency is at least 90 percent by weight.
—centrifuges, rotary vacuum filters, or other filters or devices which have an exposed liquid surface must be used with a VOC collection and abatement system which reduces VOC emissions by a minimum of 90 percent.
—process tanks for material containing VOC must be covered or otherwise sealed at all times, except while loading, unloading or during maintenance of such tanks.
—VOC cannot be transferred into a stationary storage tank unless that tank is equipped with a permanent submerged fill pipe, vapor return line, and a pressure-vacuum relief valve.
—Fugitive vapor leaks, from equipment storing, mixing, blending, reacting, or transferring, containing VOC must be immediately recorded and promptly repaired.
—An operational and maintenance program must be submitted to the Air Pollution Control Officer for approval of the equipment required by the rule. The operation and maintenance program must identify all key system operating parameters and include proposed daily inspection schedules, anticipated ongoing maintenance steps, and proposed daily recordkeeping practices.
—Test methods are listed for the measurement to total absolute vapor pressure, VOC content, collection efficiency, and VOC content of fluids.

EPA Proposed Action

EPA has evaluated SDCAPCD's Rule 67.15 for consistency with the CAA, EPA regulations, and EPA policy and has found that the rule addresses all of EPA's requirements. The adoption and approval of this rule results in controlling a previously uncontrolled source and will, therefore, lead to additional emission reductions towards attainment in the San Diego County area. Therefore, SDCAPCD Rule 67.15 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. Sections 7401–7671q.

Dated: May 28, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92–13382 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA21–1–5454; FRL–4116–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD) on April 30, 1991. The California Air Resources Board (CARB) submitted that version of the rule to EPA on October 24, 1991 as a new rule for the SIP. The rule is SMAQMD's Rule 447, Organic Liquid Loading, which controls volatile organic compound (VOC) emissions from the loading of organic liquids into mobile or stationary tanks. EPA has evaluated SMAQMD's Rule 447 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA), because the rule strengthens the SIP. At the same time, EPA is proposing a limited disapproval of SMAQMD's Rule 447 because the rule does not fully meet the part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada & Hawaii, Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.
Sacramento Metropolitan Air Quality Management District, 8411 "K" Street, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern California & Arizona, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105; Telephone: (415) 744–1187, FTS: 484–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act) that included Sacramento County. 43 FR 8964; 40 CFR 81.305. Because SMAQMD was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 1977 CAA section 172(a)(2). The SMAQMD was unable to attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the SMAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments were enacted.

Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Sacramento is classified as a serious nonattainment area;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many RACT rules to EPA for incorporation into its SIP on October 25, 1991,[3] including Rule 447 being acted on in this notice. The rules submitted on October 25, 1991 were found to be complete on December 18, 1991 pursuant to EPA's completeness criteria adopted pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991). (These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.) Rule 447 is being proposed for limited approval and limited disapproval.

The SMAQMD Rule 447 controls the emission of volatile organic compounds (VOCs) from the loading of organic liquids. VOCs contribute to the production of ground level ozone and smog. The rule was adopted as part of Sacramento's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and was revised and submitted as a new SIP rule in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SMAQMD's Rule 447.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control of technique guidelines (CTGs).

[2] Upon the date of enactment of the CAA, the designation of SMAQMD as nonattainment continued under section 107(d) and the area was classified by operation of law pursuant to section 181(a). See 56 FR 56694 (November 6, 1991).

[3] The State of California submitted an earlier version of SMAQMD's Rule 447 to EPA on March 26, 1990 but that version was superseded by a resubmittal of the rule on October 25, 1991.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for specific source categories. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" RACT rules. See section 182(a)(2)(A). The CTGs applicable to Sacramento's Rule 447 are (1) "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA document EPA–450/2–77–035, and (2) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals, EPA document EPA–450/2–77–026. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's Rule 447 is a new SIP rule which was adopted by SMAQMD to control VOC emissions from the loading of organic liquids. It includes the following significant provisions:

—The rule is applicable to liquids with a true vapor pressure of 0.5 pounds per square inch or more.
—Facilities are to be maintained leak free and vapor tight.
—Facilities are required to have California Air Resources Board certification of vapor control systems. Certified systems achieve 90–95% efficiency in controlling vapors.
—Facilities are limited to emissions amounting to 0.6 pounds per 1000 gallons of liquid for those receiving product by truck or 0.08 pounds per 1000 gallons for facilities receiving product by pipeline.
—Test methods for determining compliance with the emissions limits and vapor tightness are referenced.
—Recordkeeping provisions are included.

EPA has evaluated Sacramento's submitted new Rule 447 for consistency with the CAA, EPA regulations and EPA policy and has found that the rule addresses and corrects many of the deficiencies identified by EPA during the SMAQMD's rulemaking process. These corrections have resulted in a clearer, more enforceable rule. Although the approval of the Sacramento rule will strengthen the SIP, the rule contains a deficiency which was required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Sacramento's Rule 447 is deficient because it allows the Air Pollution Control Officer to approve the use of alternate, unspecified and unapproved test methods in place of the specified EPA test methods. A detailed discussion of the rule and the deficiency can be found in the Technical Support Document for this rule (dated January 28, 1992) which is available from the U.S. EPA, Region 9 office. Because of the deficiency, the rule is not approvable pursuant to the section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the pre-amended Act as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiency, EPA cannot grant approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP; however, the rule does not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiency. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of SMAQMD's submitted Rule 447 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the rule because it contains a deficiency that must be corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the

requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes the final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Upon publishing a final notice of a limited approval and limited disapproval, that action will approve the rule into the SIP so that the rule is federally enforceable, and, at the same time, the final notice will require that the District correct the deficiency in the rule within eighteen months in order to avoid the promulgation of sanctions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated March 13, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13482 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–4–5352; FRL–4122–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District and Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (APCD) on October 16, 1990, and by the Placer County APCD on September 25, 1990. The California Air Resources Board (CARB) submitted these revisions to EPA on April 5, 1991. The revisions concern San Diego's Rule 61.1, Receiving and Storing of Volatile Organic Compounds at Bulk Plants and Bulk Terminals, and Placer's Rule 212, Storage of Petroleum Products. Both rules control emissions of volatile organic compounds (VOCs) from the transfer and/or storage of organic liquids. EPA has evaluated San Diego's Rule 61.1 and Placer's Rule 212 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act as amended (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of San Diego's Rule 61.1 and Placer's Rule 212 because the rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's Technical Support Document for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.
San Diego County APCD, 9150 Chesapeake Drive, San Diego, CA 92123–1095.
Placer County APCD, 11464 "B" Avenue, Auburn, CA 95603.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183, FTS: 484–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Diego County APCD. 43 FR 8964, 40 CFR 81.305. On September 12, 1979, EPA promulgated a list of ozone nonattainament areas under the provisions of the 1977 CAA that included Placer County (excluding the Tahoe Basin) APCD. 44 FR 53081, 40 CFR 81.305. Because both the San Diego and Placer County APCDs unable to reach ozone attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone to December 31, 1987. 1977 CAA section 172(a)(2). The two districts did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that those portions of the California State Implementation Plan (SIP) for the San Diego and Placer County APCDs were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-

amendment guidance.[1] EPA's SIP-Call used that guidance to indicate corrections necessary for specific nonattainment areas. The San Diego County area is classified as a server nonattainment area and the Placer County area is classified as a serious nonattainment areas; [2] therefore, these two areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 5, 1991, including the rules being acted on this notice. This notice addresses EPA's proposed action for San Diego Rule 61.1, Receiving and Storing of Volatile Organic Compounds at Bulk Plants and Bulk Terminals, and Placer Rule 212, Storage of Petroleum Products. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [3] and are being proposed for limited approval and limited disapproval.

San Diego's Rule 61.1 controls the emission of VOCs from the transfer of organic liquids, primarily gasoline, between storage tanks and mobile tanks, while both San Diego's Rule 61.1 and Placer's Rule 212 control VOC emissions from storage of gasoline and other organic liquids in tanks. VOCs contribute to the production of ground level ozone and smog. Both San Diego's Rule 61.1# and Placer's Rule 212 were originally adopted as part of their effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action on the two rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations as found in section 110 and Part D of the CAA and in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forward from the pre-amended Clean Air Act.

For the purpose of assisting states and local authorities in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

The CTGs applicable to both the San Diego and Placer County rules are EPA CTG documents # EPA–450/2–77–036, "Control of Volatile Organic Emissions from Storage of Petroleum Products in Fixed-Roof Tanks", and # EPA–450/2–78–047, "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks". Further interpretations of the requirements of the CAA and EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

San Diego County APCD Rule 61.1, Receiving and Storing Volatile Organic Compounds at Bulk Plants and Bulk Terminals

This is a revised rule which controls VOC emissions from facilities having tanks with a capacity of 40,000 gallons or more. The following are the significant revisions:

1. An EPA approved test method for Reid vapor pressure determinations has been added.

2. Several CTG provisions for tanks and tank roof seals have been added. Some are more stringent than the CTG.

3. Provisions for, and an EPA approved test method applying to, vapor and liquid leaks have been added.

4. Inspection and recordkeeping provisions have been added.

Placer County APCD Rule 212, Storage of Petroleum Products

This is also a revised rule which is intended to control VOC emissions from petroleum storage tanks with a storage capacity of 40,000 gallons or more. The following are the significant changes:

1. The applicability of the rule has been lowered from liquids with a vapor pressure of 1.5 pounds per square inch to 0.5 pounds per square inch.

2. Discretionary approval by the Control Officer for unspecified control equipment has been deleted.

3. California Air Resources Board certification of vapor control systems has been added.

4. Recordkeeping provisions have been expanded.

5. An EPA approved test method for vapor leak detection has been added.

EPA has evaluated San Diego's Rule 61.1 and Placer's Rule 212 as submitted for consistency with CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many of the deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of these rules will strengthen the SIP, both rules still contain deficiencies which were required to be corrected pursuant to the section 182 (a)(2)(A) requirement of Part D of the CAA. The San Diego Rule 61.1 is deficient because it lacks recordkeeping provisions for exemption of low-throughput service stations and also lacks test methods for determining true vapor pressure and the efficiency of control devices. The Placer Rule 212 is deficient because it also lacks a test method for determining true vapor pressure. Because of these deficiencies, the rules are not consistent with the interpretation of section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. Details of these deficiencies may be found in EPA's Technical Support Documents for each rule.

Because of the above deficiencies, EPA cannot grant full approval of the rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] The two areas were redesignated nonattainment and classified by operation of law pursuant to section 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991). These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.

adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of submitted San Diego County APCD Rule 61.1 and Placer County APCD Rule 212 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of the rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 1992.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 92–13483 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OAQPS No. CA14–2–5382; FRL–4127–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Kern County Air Pollution Control District (Southeast Desert Portion) (KCAPCD)[1] on April 11, 1991 and May 6, 1991 respectively. The California Air Resources Board (ARB) submitted the SJVUAPCD and KCAPCD rules to EPA on May 30, 1991. These revisions concern KCAPCD Rule 410.4, Surface Coating of Metal Parts and Products and the SJVUAPCD Rule 460.3, Surface Coating of Metal Parts and Products. Both of these rules regulate volatile organic compound (VOC) emissions from the surface coating of metal parts and products. EPA has evaluated both the KCAPCD Rule 410.4 and the SJVUAPCD Rule 460.3 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990 (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k)(3) of (Southeast Desert Portion) Rule 410.4 and SJVUAPCD Rule 460.3 because the rules do not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii, Rulemaking Section (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 M Street, suite 275, Bakersfield, CA 93301.

San Joaquin Valley Unified Air Pollution Control District, 2314 Mariposa Street, Fresno, California 93711.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Southern California and Arizona, Rulemaking Section (A–5–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188, FTS 484–1188, FAX: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (CAA or the Act) that included the following eight air pollution control districts (APCDs) located in the San Joaquin Air Basin: Fresno County APCD, Kern County APCD,[2] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8962, 40 CFR 81.305. Because the eight counties of the San Joaquin Valley Air Basin were unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date for ozone to December

[1] The portion of Kern County affected by KCAPCD Rule 410.4 is that portion of Kern County which lies outside of San Joaquin Valley Air Basin and is contained in the Southeast Desert Air Basin.

[2] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1990).

31, 1987.[3] 1977 CAA section 172(a)(2). The districts did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the portion of the SIP for the eight air pollution control districts of the San Joaquin Valley Air Basin were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In section 182(a)(2)(A) of the amended Act, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin, which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the southeast desert portion of Kern County.

Section 182(a)(2)(A) applies to pre-enactment section 107 nonattainment areas that were designated non-attainment upon enactment and classified as marginal or above under section 181(a)(1) by operation of law. Such areas must adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[4] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVAUPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[6]

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3. These submitted rules were found to be complete on July 10, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [7] and are being proposed for limited approval and limited disapproval.

KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 both control the emission of VOCs from the surface coating of metal parts and products. VOCs contribute to the production of ground level ozone and smog. KCAPCD Rule 410.4 was originally adopted as part of the KCAPCD's effort to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and has been revised to meet EPA's SIP-Call. SJVUAPCD Rule 460.3 is a new rule adopted in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. In addition, SJVUAPCD Rule 460.3 was adopted to unify and replace the existing surface coating of metal parts and products rules in the eight air pollution control districts of the San Joaquin Valley Air Basin. The following is EPA's evaluation and proposed action for KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA has prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is considered RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring states to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to the surface coating of metal parts and products Rule 410.4 and 460.3 in this notice, is entitled Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products, EPA document #450/2-78-015. Further EPA policy determinations of RACT requirements are also found in the Blue Book. In general, these requirements have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 will replace the existing surface coating of metal parts and products rules of the eight APCDs of the SJVUAPCD and the southeast desert portion of Kern County. Both rules were adopted to control emissions from the surface coating of metal parts and products through regulation of VOC content in coatings, storage and cleanup requirements, and other administrative procedures. KCAPCD Rule 410.4 and SJVUAPCD Rule 460.3 are nearly identical and include the following revisions from the current SIP rules:

—Revision of the VOC definition for consistency with EPA requirements;
—Revision downward to 15 pounds per day or less (existing rules allow up to 50 pounds per day) of VOC emissions that a facility may emit and be exempt from this rule;
—Addition of VOC standards for specialty coatings;
—Exempt compounds and water are subtracted in the calculation of grams of VOC per liter of coating applied and grams of VOC per liter of material;
—Addition of recordkeeping requirements;
—Specification of test methods to be used for compliance determination;

[3] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982.

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGS).

[5] The San Joaquin Valley Air Basin was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See FR 56694 (November 6, 1991).

[6] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the CAA. [See § 107(d) and § 182(a)(2)(A) of the amendments.] However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of § 182(a)(2)(A).

[7] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

—Addition of surface preparation and cleanup provisions;
—Deletion of provision allowing alternative emission control requirements as approved by the executive office;
—Deletion of transfer efficiency requirement.

EPA has evaluated the submitted rules for consistency with the CAA, EPA regulations, and EPA policy and found that the revisions address and correct many of the deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of a more stringent exemption cutoff in submitted Rules 410.4 and 460.3 should lead to more emission reductions.

Although the approval of KCAPCD (Southeast Desert Portion) Rule 410.4 and SJVUAPCD Rule 460.3 will strengthen the SIP, each rule still contains provisions that do not fulfill the requirements of Part D of the CAA. These deficient provisions consists of VOC content limitations for specialty coatings which do not meet RACT limits, and include:

Coating	VOC (proposed)(gm/l)	VOC (CTG)(gm/l)
High Temperature	550	420
Silicone Release	700	420

The provisions are unapprovable because they are not consistent with the guidance found in the aforementioned CTG and the Districts have not supported their proposed VOC limits as RACT. These deficiencies were required to be corrected under the EPA SIP-Call and section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book.

Because of the above deficiency, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. EPA also cannot grant partial approval of these rules pursuant to section 110(k)(3) because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA. However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules are approvable under sections 110(k)(3) and 301(a) of the Act for strengthening the SIP. However, the rules do not meet the section 182(a)(2)(A) requirement of Part D because of the noted deficiency. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of submitted Rules 410.4 and 460.3 under sections 110(k)(3) and 301(a) of the CAA in order to strengthen the SIP.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by the EPA SIP-Call and section 182(a)(2)(A) of the CAA, and, as such, the rules do not meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin to run at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A), EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (see 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 15, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13484 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–12–6–5376; FRL–4141–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District

ATENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the San Diego County Air Pollution Control District (SDCAPCD) on October 16, 1990. The California Air Resources Board (CARB) submitted this revision to EPA on April 5, 1991. The revision concerns Rule 67.3, Coating of Metal Parts and Products, which limits volatile organic compound (VOC) emissions from thinners, diluents, primers, and coatings used on metal parts and products, and from clean-up solvents used on associated equipment. EPA has evaluated the revision to Rule 67.3 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act as amended in 1990 (CAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval of Rule 67.3 under section 110(k)(3) because the rule does not fully meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before July 9, 1992.

ADDRESSES: Comments may be mailed or telecopied to: Daniel A. Meer, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Fax: (415) 744–1076.

Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section 1219 "K" Street, Sacramento, CA 95814.
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1188, FTS: 484–1188.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the CAA, as amended in 1977 (1977 CAA or the 1977 Act) that included San Diego County. 43 FR 8964, 40 CFR 81.305. Because San Diego County APCD was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 1977 CAA section 172(a)(2). San Diego County APCD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the San Diego County APCD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Public Law 101–549, 104 Stat. 1399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-1990 Act section 172(b), as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. San Diego County is classified as "severe"[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP, including the rule being acted on in this notice. This notice addressed EPA's proposed action for SDCAPCD Rule 67.3, Coating of Metal Parts and Products. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V[3] and is being proposed for limited approval and limited disapproval.

Rule 67.3 controls the emissions of VOCs from operations involving the coating of metal parts and products. VOCS contribute to the production of ground level ozone and smog. San Diego County's Rule 67.3 was originally adopted as part of the SDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SDCAPCD Rule 67.3.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis of today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norm for what is RACT for specific source categories. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring states to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Metal Parts and Products, Rule 67.3, is entitled, "Surface Coating of Miscellaneous Metal Parts and Products", EPA document number EPA-450/2–78–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD's submitted Rule 67.3, "Coating of Metal Parts and Products", includes the following revisions from the current SIP rule:

—Added capture and control limitations,
—Added specific EPA and ASTM test methods,
—Added specific recordkeeping provisions,
—Deleted daily weighted averaging for cross-line equivalency determinations.

EPA has evaluated SDCAPCD's submitted Rule 67.3 for consistency with the CAA, EPA regulations and EPA policy, and finds that the revision addresses and corrects many deficiencies previously identified by EPA. These corrected deficiencies result in a clearer, more enforceable rule. Furthermore, the addition of more stringent limits in submitted Rule 67.3 should lead to more emission reductions.

Although the approval of SDCAPCD Rule 67.3 will strengthen the SIP, this rule still contains deficiencies which are required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The rule contains specialty coating limitations which exceed those in the CTG as well as air pollution control officer discretionary provisions within the recordkeeping requirements. The rule fails to include provisions to require that sources make and maintain usage records needed to demonstrate and ensure continuous compliance with the add-on capture and control equipment limitations in the rule. A detailed discussion of rule deficiencies can be found in the

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The entirety of San Diego County was designated nonattainment for ozone and classified severe by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694, November 6, 1991 (40 CFR 81.305).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991). These will replace the completeness criteria currently set forth in 40 CFR part 51, appendix V.

technical support document for submitted Rule 67.3 (January 15, 1992) which is available from the U.S. EPA Region 9 office. Because of these deficiencies, the rule is not approvable under section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the pre-amended Act, as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of the rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of SDCAPCD's submitted Rule 67.3

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. At the end of that period, if EPA has not approved these rules as meeting the applicable requirements of section 182(a)(2)(A), EPA will impose one of these two sanctions. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671.

Dated: April 20, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–13485 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 86

[AMS–FRL–4140–5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring On-Board Diagnostic Systems on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop and reopening of comment period.

SUMMARY: This notice announces that on June 30, 1992, the Environmental Protection Agency (EPA) will hold a public workshop to address certain issues that have been raised in connection with EPA's Notice of Proposed Rulemaking (NPRM) for On-Board Diagnostic Systems (OBD) that was published in the Federal Register on September 24, 1991 (56 FR 48272). The public workshop is being conducted so that EPA and interested parties can discuss certain issues pertaining to the requirement of section 202(m)(5) of the Clean Air Act (CAA) that emission-related repair information be made available to "any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines." Specifically, the issues to be discussed will include the following: Restricting access to recalibration information to qualified technicians; guidelines or minimum requirements as to what emission-related repair information must be provided by vehicle manufacturers; and factors relevant to the determination of the cost of emission-related repair information. This notice also announces that the docket in this proceeding shall be reopened for thirty days following the workshop for comments pertaining to issues discussed at the workshop.

DATES: The workshop will convene at 9 a.m. on June 30, 1992, and will adjourn after the time necessary to complete the presentations and discussion, but no later than the close of business on June 30, 1992. Persons interested in making presentations at the workshop are requested to notify the Agency contact person listed below at least five days prior to the workshop so that a final agenda can be prepared. Interested parties may submit written comments pertaining to the issues addressed at the public workshop on or before July 31, 1992.

ADDRESSES: The workshop will be held at the U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Written comments must be sent in duplicate to: EPA Air Docket LE–131, Attention: Docket No. A–90–35, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 382–7548. This docket is located at the above address on the first floor of Waterside Mall and is open for public inspection weekdays from 8:30 to 12 noon and from 1:30 p.m. to 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying services.

FOR FURTHER INFORMATION CONTACT: Cheryl F. Adelman, Certification Division, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4434.

SUPPLEMENTARY INFORMATION: EPA is holding this workshop to provide EPA and the public with an opportunity to further discuss EPA's proposals regarding certain issues related to the availability of emission-related repair information, and for the public to offer suggestions or alternatives to EPA's proposals. These issues were discussed previously at a public hearing that was held on November 6, 1991. A copy of a

transcript of that hearing is available in the docket. A court reporter will be present at the workshop announced here to make a written transcript of the proceedings and a copy will be placed in the docket following the workshop.

I. Background

Section 202(m)(5) of the CAA directs EPA to promulgate a rule that requires all light-duty vehicles and light-duty trucks manufactured in model years 1994 and thereafter to contain an on-board diagnostic (OBD) system which will monitor emission-related components for malfunction or deterioration. To assure that the OBD system will continue to perform properly and that the repair and service industry will have the information needed to perform necessary emission-related repairs, section 202(m)(5) of the CAA directs EPA to promulgate regulations that require "manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines * * * any and all information needed to make use of the emission control diagnostics system * * * and such other information including instructions for making emission-related diagnosis and repairs." In the September 24, 1991 NPRM, EPA proposed regulations to implement section 202(m)(5) of the Act by establishing certain criteria that a manufacturer would be required to meet. These proposed criteria will be discussed below.

EPA received extensive comments on its proposed availability requirement. Generally, commenters opposed to EPA's proposed criteria provided alternative recommendations. However, on certain issues, commenters criticized EPA's position without providing alternative solutions. In light of this, as well as the number of responses received on these issues and EPA's concern that commenters did not consider all of the potentially relevant factors that must be addressed to resolve each issue, EPA has decided to provide the public with a further opportunity to comment on certain issues.

First, EPA requests comment on whether access to recalibration information, i.e., information that is required to verify or alter emission operating parameters or performance settings of an engine, should be restricted to qualified technicians. Recalibration information may be necessary to perform emission-related repairs; however, if used improperly, recalibration may cause an increase in emissions and poor vehicle performance. Commenters expressed concern over the potential for misuse of recalibration information, but failed to adequately address how technicians could perform emission-related repairs without access to such information.

Second, EPA requests comment concerning the need for and content of any guidelines or minimum requirements regarding what emission-related repair information manufacturers should make available. The comments of manufacturers indicate that they believe that such guidelines or requirements are necessary to ensure that EPA does not deny a certificate of conformity to such manufacturers based on inadequate information availability.

Last, EPA requests comment on what factors are relevant to the determination of the appropriate cost of emission-related repair information. EPA believes that a determination of such factors is necessary to assure that the cost charged for service information will be reasonable. Otherwise, independent technicians may be unable to purchase service information for a wide variety of vehicles due to the cost of such information.

A. Restricted Access to Recalibration Information

Recalibration information is information that is required to verify or alter any emission operating parameters or performance settings of an engine. As such, it is a type of information that appears to fall within the scope of emission-related repair information. Recalibration information may be necessary to perform emission-related repairs; however, if used improperly, recalibration of the engine may cause an increase in emissions and poor vehicle performance.

In the NPRM, EPA recognized the importance of having only legitimate OEM recalibrations performed on a vehicle. EPA requested comment on the best mechanism for providing nonfranchised technicians with recalibration information necessary to perform recalibrations.

EPA received numerous comments from all sectors of the automotive industry on the issue of the availability of recalibration information. Many of the commenters expressed concern over potential problems. These problems could include increased emissions, poor vehicle performance, and warranty and recall liability for manufacturers that could result from unqualified technicians performing improper recalibrations. Several commenters suggested that this concern could be addressed by restricting access to recalibration information to qualified technicians or repair facilities.

This workshop will provide interested parties the opportunity to further comment on the availability of recalibration information, whether qualified technicians or repair facilities should be able to receive recalibration information, and how technicians would qualify to receive recalibration information.

B. Information Guidelines for Manufacturers

Another criteria proposed by EPA in the OBD NPRM related to the scope of emission-related repair information that EPA would require manufacturers to make available to persons engaged in repairing or servicing motor vehicles or motor vehicle engines. EPA proposed that "all information needed to make emission-related repairs" be made available to the automotive service industry. EPA did not provide guidelines or specify the types of information that this would encompass.

Several commenters responded that EPA should define or provide guidelines as to what information must be provided. They asserted that failure to do so could result in manufacturers providing different levels of information due to different interpretations of the phrase "all information". In addition, some manufacturers indicated that without guidelines, they could be at risk for last-minute denial of certification approval. They asserted that EPA could delay the certification process by denying certification based on the fact that the provisions of a certification plan were inadequate to assure the availability of "all information" needed to make emission-related repairs. EPA believes this concern is based on EPA's proposal to withhold certification if manufacturers fail to describe in their application for certification how they would make information available in a manner which satisfies their regulatory responsibilities. (56 FR 48282)

The workshop will allow interested parties the opportunity to present ideas regarding specific types of, or guidelines to determining the information that should be encompassed by the phrase "all information necessary to make emission-related repairs."

C. Cost of Emission-Related Repair Information

In the September 24 NPRM (56 FR 48272), EPA proposed that manufacturers make emission-related information available to independent technicians at a reasonable price. In determining whether the price of information is reasonable, EPA proposed to consider all relevant

factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which the information is provided, and the price charged by other manufacturers for similar information. EPA also proposed that when manufacturers provide the same exact information to independent technicians and dealerships, the price to independent technicians for such information would not exceed the lowest price charged to any of a manufacturer's authorized dealerships. EPA requested comment on what information is needed to determine the reasonableness of the cost for information provided by an OEM to an authorized dealership as part of a franchise agreement.

EPA received numerous comments on the issue of cost. Many of the comments from manufacturers and manufacturer associations suggested one or more additional factors that EPA should take into consideration in determining the reasonable cost of service information. Among the factors suggested were the following: a manufacturer's cost to create, develop, administer, warehouse and distribute publications for one-time transactions; the cost of other similar aftermarket information; the size of a manufacturer; the thoroughness of the information; and the number of product lines covered by a publication.

Some manufacturers asserted that requiring them to provide any information to independent technicians at a price that would not exceed the lowest price charged to any of a manufacturer's authorized dealerships would be unfair to the dealerships. This claim is based on the fact that some manufacturers subsidize the cost of information provided to dealerships and employ variable pricing strategies. Therefore, the cost to a dealership may not reflect the true cost or value of information. According to the commenters, since manufacturers would be unable financially to similarly subsidize thousands of independent technicians, they would be forced to increase the price of repair information to authorized dealerships.

A few manufacturers argued that restrictions on the cost of information would restrict flexibility as to the information that would be provided, and could result in a decision to provide less information. Other manufacturers indicated that a reasonable price for service information would be its fair value as determined in the marketplace.

Independent technicians, technician associations, and equipment manufacturers commented that independent technicians need numerous manuals to work on a wide variety of vehicles. Therefore, they asserted that the EPA should consider the amount of information independents need to purchase and the size of the business which purchases the information. They also stated that the definition of "reasonable cost" should take into account factors such as volume or other discounts and inflation.

A few commenters indicated that it is inappropriate to presume that cost of repair information is "reasonable" on the basis that a manufacturer is selling the information at that price to its dealers. In some cases, dealers have a longstanding relationship with the manufacuters that entails dealers paying a price for some materials in exchange for lower prices for other materials or services. They asserted that this approach to "reasonable cost"could be subverted where the manufacturer chooses an expensive approach to make the information available in lieu of an equally effective but less expensive approach.

Independents suggested that the concerns raised by the determination of the reasonable cost could be resolved by the formation of a central data repository.

As the summary of comments above reveals, the determination of the reasonable cost for emission-related repair information involves consideration of many factors. Based on the arguments presented in the comments, EPA is concerned that many of the commenters failed to adequately consider all of the potentially relevant factors. In doing so, it is also likely that they failed to consider alternatives for assuring that information is distributed at an appropriate cost. Therefore, EPA is conducting this workshop to provide interested parties the opportunity to participate further in the resolution of the cost issue.

II. Issues

EPA believes that given the issues discussed above, the following subject areas are likely to be discussed at the workshop:

—Factors to be considered in determining the reasonable cost of repair information.
—Options for assuring that repair information is made available at a reasonable cost: For example, a central repository.
—The specific costs incurred by manufacturers in providing repair information.
—The projected total cost to independent technicians for acquiring repair information from various manufacturers.
—Other issues related to the determination of the cost of repair information.
—Guidelines to assist manufacuters in determining what information must be provided to technicians to satisfy the requirement that manufactures make available "all information necessary to make emission-related repairs."
—Criteria for classifying a technician or repair facility as qualifed.
—Mechanism for assuring that only qualified technicians or repair facilities receive recalibration information.
—Other issues related to the availability of recalibration information.

III. Format of Workshop

The workshop will be conducted informally. EPA will make a presentation highlighting the information availability provisions in the September 1991 NPRM. After EPA's presentation, attendees will be encouraged to make oral presentations and participate in a discussion of issues addressed in this workshop notice. A court reporter will be present to make a written transcript of the proceedings. A copy of the transcript and all documents received at the workshop will be placed in the docket. The docket in this proceeding shall be reopened for thirty days following the workshop for comments pertaining to issues discussed at the workshop.

Dated: June 2, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-13380 Filed 6-8-92; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 91-115 FCC No. 92-168]

Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action invites further comment to assist the Commission in determining whether to establish billing name and address (BNA) service requirements for BNA associated with

local exchange carrier (LEC) joint use cards.

DATES: Comments must be filed on or before June 10, 1992, and reply comments on or before June 25, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin, 202–632–6917.

SUPPLEMENTARY INFORMATION: On April 9, 1992 the Commission adopted a Report and Order and Request for Supplemental Comment (Report and Order) in CC Docket No. 91–115, FCC No. 92–168, released May 8, 1992. In this Report and Order the Commission reviewed LEC calling card practices. The order requires that all LECs provide non-discriminatory access to LEC joint use card validation data and to LEC line number screening data and that any LEC entering into a card honoring agreement with one interexchange carrier (IXC) must stand ready to enter such an agreement with all requesting IXCs. The Commission seeks further comment to assist it in determining whether to establish BNA service requirements. The full text of this Commission proposal is available for public inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this proposal may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114—21st Street, NW., Washington, DC 20036.

Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13398 Filed 6–8–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Cancellation of Public Meeting

The June 11, 1992 meeting, 2–4 pm of the Committee on Governmental Processes of the Administrative Conference, notice of which appeared in the **Federal Register**, Wednesday, May 20, 1992. Vol. 57, No. 98, page 21386, is now cacelled.

Dated: June 4, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92–13580 Filed 6–8–92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Carlota Copper Project, Tonto National Forest, Gila and Pinal Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for a proposal from Carlota Copper Company to develop a mine for copper extraction in the Pinto Creek/Powers Gulch area southwest of the existing Pinto Valley Mine. The Carlota project area is located approximately 6 miles west of Miami, Arizona, in T. 1 S., R. 13 E., portions of sections 1, 2, 12; T. 1 S., R. 14 E., portions of Sections 6, 7; T. 1 N., R. 13 E., portions of Sections 25, 26, 35, 36; and T. 1 N., R. 14 E., portion of Section 31. The purpose of the EIS will be to develop and evaluate a range of alternatives for mining and related construction. The alternatives will include a no action alternative, involving no mining or road construction, and additional alternatives to respond to issues generated during the scoping process. Following analysis and selection of an alternative, it may be determined that an amendment is necessary to the Tonto National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and proposed projects. The Forest Service invites written comments on the scope of this project. In addition, the Forest Service gives notice of this analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis must be received in writing by July 27, 1992.

ADDRESSES: Submit written comments to Stuart Herkenhoff, Recreation and Lands Staff Officer, Globe Ranger District, Rt. 1, Box 33, Globe, Arizona 85501.

RESPONSIBLE OFFICIAL: The responsible official who will make the decision regarding this proposal is James L. Kimball, Forest Supervisor, Tonto National Forest, P.O. Box 5348, Phoneix, Arizona 85010, (602) 225–5200. He will decide under what circumstances the mining operation may proceed.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action, public scoping meetings, and the environmental impact statement to Stuart Herkenhoff, (602) 425–7180.

SUPPLEMENTARY INFORMATION: The Forest Service proposed Carlota Copper Project (Project) would consist of a mine with three open pits, waste rock dumps, topsoil storage areas, a leach pad, process ponds, a solvent extraction/electrowinning plant, roads, buildings for maintenance, and offices. Approximately 1250 acres will be disturbed by the project out of an approximate 3500 acres of analysis area. Most of the analysis area is on National Forest System (NFS) land, with the remainder being on private land. The waste rock dumps will be designated to contain approximately 130 million total tons of rock and will disturb approximately 400 total acres of land. The open pits will disturb approximately 370 total acres. The project has an estimated life of 10 to 12 years and ore production will total approximately 54 to 70 million tons. The ore will be processed on site by conventional leaching, solvent extraction, and electrowinning to produce copper cathodes.

During construction, an estimated 250 temporary workers will be employed. Approximately 225 employees will be employed at the project during operations. The project will require approximately 1200 acre feet of water per year. Approximately 50 megawatt hours per year of electric energy will be supplied by the Salt River Project.

The ore bodies will be mined using conventional open pit mining techniques and mining equipment. The planned ore mining rate is five million tons per year. Waste rock and alluvium will be mined at an average rate of about 14 million tons per year. Waste rock will be hauled to the waste rock dumps. Ore will be hauled by truck from the pits to an adjacent crushing plant and conveyed to the leach pad, or hauled directly from the pits to the pad. As required, ore will be crushed to approximately minus 6-inch size at the crushing plant prior to being conveyed to the leach pad. A single crushing plant is planned to serve all pits. This plant and associated conveyors will be relocated as needed. The nominal capacity of the plant is five million tons per year. The leach pad will have sufficient capacity for the total ore from three pits. Crushed ore will be "cured" with a strong sulfuric acid solution and allowed to rest in the heap for a minimum of three days. After curing, the ore will be leached using barren solution recirculated from the plant, producing copper-bearing leach solution. High quality copper cathodes will be produced in the plants using standard hydrometallurgical processes. Following mining, the area will be reclaimed.

Environmental studies will include air, surface and groundwater, scenic and recreational values, fish, wildlife, plants (including threatened and endangered species), soils, cultural resources, and socioeconmics. Measures to protect the environment will include reclamation, employee environmental education, spill prevention/emergency response planning, protection of archaeological sites, surface and ground water quality monitoring, erosion and sediment control, dust control, threatened and endangered species and wildlife protection, and public safety.

The following permits or licenses may be required to implement the proposed action:

1. Forest Service—Plan of Operations,
2. Environmental Protection Agency (EPA)—National Pollution Discharge Elimination System permit,
3. Army Corps of Engineers/EPA—Section 404 permit,
4. EPA/Arizona Department of Environmental Quality—
   a. Aquifer protection permit
   b. Air quality permit
   c. Stormwater discharge permit.

A number of issues have been identified to date. The major issues concern water quality and quantity, riparian areas, wildlife habitat, threatened and endangered species, cultural resources, and recreation.

This EIS will tier to the final EIS for the Forest Plan. The Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the lands within the Forest. This direction guides management practices that will be utilized during the implementation of the Forest Plan. The Project analysis area is located in Management Area 2F, which is designed to provide watershed protection, livestock grazing, non-wilderness dispersed recreation, wildlife habitat improvement, and to support environmentally sound minerals development. The analysis will evaluate a range of alternatives. Alternatives to be evaluated range from no action, with no mining or road construction, to alternatives that allow for full development of the mining and processing facilities.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. Public scoping meetings will be held in mid-July, 1992, in the Phoenix metropolitan area and in Globe, Arizona. Dates, times, and locations to be announced. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (e.g. newsletters, correspondence, etc.).

The Forest Service will be lead agency and is responsible for the preparation of the EIS. The U.S. Fish and Wildlife Services, Arizona Game and Fish Department, and Arizona Department of Environmental Quality have been invited to be co-operating agencies in accordance with 40 CFR 1501.6.

The draft EIS is expected to be filed with the EPA and to be available for public review by August, 1993. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

The final EIS is scheduled to be completed by December, 1993. In the final EIS, the Forest Service is required to respond to comments received during the comment period. The responsible official will consider the comments, responses, environmental consequences disclosed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. He will document the decision and reasons for the decision in the Record of Decision. The Record of Decision will be prepared and filed with the final EIS. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: June 2, 1992.

James L. Kimball,

Forest Supervisor Tonto National Forest.

[FR Doc. 92-13446 Filed 6-8-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[(A-588-806]

Electrolytic Manganese Dioxide From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 1, 1990 through March 31, 1991. The review preliminarily indicates the existence of a *de minimis* margin for this manufacturer/exporter during the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 14927) of the antidumping duty order on EMD from Japan for the period April 1,1990 through March 31, 1991. On April 30, 1991, the respondent, Tosoh Corporation (TOSOH), requested an administrative review for the period April 1, 1990 through March 31, 1991. We initiated the review on May 21, 1991 (56 FR 23271). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930 as amended (the Act).

Scope of Review

Imports covered by the review are shipments of electrolytic manganese dioxide. EMD is manganese dioxide (MnO2) that has been refined in an electrolysis process. During the review period, such merchandise was classified under item 2820.10.0000 of the Harmonized Tariff Schedule (HTS). The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

On January 6, 1992, the Department published a final scope ruling, Electrolytic Manganese Dioxide from Japan; Final Scope Ruling (January 6, 1992; 57 FR 395), in which it affirmed that high-grade chemical manganese dioxide (CMD-U) is a "later-developed product" and is included in the scope of the order on EMD from Japan. The Department determined that CMD-U was not specifically included or excluded from the original scope of the order because development of CMD-U was not yet complete at the time the petition was filed. For a detailed discussion, see also Electrolytic Manganese Dioxide from Japan; Preliminary Scope Ruling (November 7, 1991; 56 FR 56977).

The review covers one manufacturer/exporter to the United States of the subject merchandise, TOSOH, and the period April 1, 1990 through March 31, 1991.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Act. We used purchase price as the basis for determining United States price since the merchandise was sold to an unrelated purchaser in Japan with the knowledge that the purchaser would then export the merchandise to the United States.

Purchase price sales were based on the packed, f.o.b. and ex-works price to unrelated purchasers in Japan. Where applicable, we made deductions for foreign inland freight and foreign brokerage and handling.

Petitioners allege that Mitsubishi is the "exporter" within the meaning of 19 U.S.C. 1677(13) and, therefore, U.S. price must be determined on an exporter's sales price (ESP) basis. We have determined that there is insufficient evidence to establish that TOSOH and Mitshubishi are "related parties", or that Mitsubishi is TOSOH's agent. We also have determined that there was insufficient evidence to support petitioner's allegation of "middleman dumping." (For further discussion of these issues *see* Decision Memorandum to the File).

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, rebates, discounts, other miscellaneous movement expenses, and for the differences in packing and credit between the home and U.S. markets.

Petitioners allege that the EMD sold in the U.S. is a "specialty" product that is different than the EMD sold in the home market.

Petitioners also allege that the home market sales are "fictitious." We have determined that there is insufficient evidence to support either allegation. (For further discussion see Decision Memorandum to file).

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (Percent)
TOSOH	04/1/90-03/31/91	0.03

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption

that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 29, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13516 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-803]

Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 10, 1992, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on light-walled welded rectangular carbon steel tubing from Taiwan. This review covers one exporter for the period March 1, 1990, through February 28, 1991. We preliminarily found that dumping margins exist with respect to the exporter.

We gave interested parties an opportunity to comment on the preliminary results. We accepted comments on the preliminary results from the petitioners and rebuttal comments from the respondent. Based on our analysis of those comments, the dumping margins have changed from the preliminary results.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230, telphone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On Feburary 10, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4826) the preliminary results of the administrative review of the antidumping duty order (54 FR 5532, February 3, 1989) on light-walled welded rectangular carbon steel tubing ("LWRT") from Taiwan for the period March 1, 1990, through February 28, 1991.

The Department has now completed this review in accordance with Section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. This merchandise is classifiable under item number 7306.60.5000 of the Harmonized Tariff Schedule ("HTS"). The HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

This review covers shipments made by Ornatube Enterprise Co. Ltd. ("Ornatube") during the period March 1, 1990, through February 28, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of this review. We received timely written comments from both petitioner and respondent.

The Department was not able to accept respondent's case brief, however, because respondent failed to comply with the Department's regulations by submitting a case brief containing new factual information subsequent to the deadlines set forth in § 353.31(a)(1)(ii) of the Department's regulations. In accordance with § 353.31(a)(3) of the Department's regulations, we returned respondent's case brief with written notice specifying the information which the Department deemed to be new factual information. In addition to outlining the specific reasons for returning the comments, the Department provided the respondent with an opportunity to resubmit the case brief with the additional factual information expunged.

Despite the fact the respondent's resubmitted case brief was timely, it contained information which the Department specifically requested the respondent to expunge from the initial case brief. Again, in accordance with § 353.31(a)(3) of the Department's regulations, we returned the case brief to the respondent with written notice specifying the information which the Department deemed to be new factual information.

Because the respondent was given an opportunity to conform to the Department's regulatory guidelines and failed to do so, the Department decided not to provide the respondent with any additional opportunities to submit its case brief commenting on the preliminary results.

Neither the petitioners nor the respondent requested a hearing to discuss the preliminary results.

The following comments are based on the petitioners' case brief and the respondent's rebuttal brief.

Comment 1: The petitioners contend that Department's use of best information available ("BIA") was proper because, when viewed in the context of the entire administrative record, respondent's submissions were unresponsive, untimely and inadequate. Petitioners argue that the Department should again use the information in the petitioner's cost of production ("COP") allegation as the basis for calculating constructed value ("CV").

In its rebuttal Ornatube contends that the Department wrongfully used BIA to calculate foreign market value ("FMV") instead of using respondent's questionnaire responses.

Ornatube insist that the Department should use its initial questionnaire response as well as its COP questionnaire response to calculate antidumping margins.

Ornatube argues that it would have been "extremely costly, time-consuming, and beyond the business reality" to fully respond to the Department's COP questionnaire because it requested production costs for each model sold in the home market and constructed value information for each model sold in the United States market. Morever, Ornatube argues that the weighted-average cost information submitted in the COP questionnaire response was sufficient to analyze whether sales in the United States were made at less than fair market value because of the "huge" volume of its annual production and the fact that only a small portion of its production was exported to the United States.

Department's Position: We agree with the petitioners that the use of BIA was fully justified under the circumstances.

Section 776(c) of the Act and § 353.37 of the Department's regulations provide that, whenever a party refuses or is unable to produce accurate information requested in a timely manner and in the form required the Department will use BIA.

On June 18, 1991, the Department received a questionnaire response from Ornatube. The Department subsequently received an allegation from petitioners that Ornatube made its home-market sales at prices below the cost of production. The Department determined

that an adequate COP allegation had been made and subsequently issued a COP questionnaire on September 18, 1991.

The respondent's October 23, 1991, COP questionnaire response was deemed deficient by the Department. The weighted-average cost information submitted by Ornatube, which represented the varied products under the scope of this review, was determined to be insufficient to conduct a thorough cost analysis. The Department requires costs to be allocated on a per-unit basis, as differently-sized products may have different cost structures.

Furthermore, the respondent failed to provide responses to much of the Department's COP questionnaire. The respondent failed to provide the actual, per unit direct material, direct labor and factory overhead costs incurred for production during the period of review. The respondent failed to answer questions pertaining to its financial accounting practices for fixed assets, its inventory, or its use of alternative accounting methodologies. The respondent also failed to describe the cost accounting system it uses to record the production costs of the subject merchandise. The respondent's description of its manufacturing process consisted of a flowchart with virtually no narrative explanation. The description of the manufacturing process should have included a complete flowchart of the production process, including descriptions of each stage in the process and identification of the points in the process where one or more production stages comprise a direct cost center. The respondent failed to provide the methodology used to derive its reported material, direct labor, overhead, general, selling, administrative and interest expenses. No methodology was provided explaining how profit was derived in the COP questionnaire response. Lastly, no information on costs of preparing the products for shipment in the home market was provided in the COP questionnaire response.

Due to the deficient response to the initial COP questionnaire, the Department issued a deficiency questionnaire. In its response to the deficiency questionnaire, the respondent claimed it had made a good faith effort to comply with the first COP questionnaire and further claimed that if the information requested was not specifically contained in the first COP questionnaire response, it could be derived from the original COP questionnaire response, which the Department had already deemed to be deficient.

Because the respondent's cost information was so deficient as to provide an inadequate basis for analysis, the Department decided to bypass the cost test and proceed to best information otherwise available, as directed by section 776(c) of the Act, in calculating FMV (See Certain Brass Sheet and Strip from Italy; Final Results of Antidumping Duty Administrative Reviews (57 FR 9235, 9236, March 17, 1992)). The best information otherwise available is petitioners' cost of production data and allegation that all of Ornatube's home-market sales were at prices below COP.

Therefore, the Department has used constructed value, based on petitioners' information, as the basis for FMV, in accordance with section 773(b) of the Act.

Comment 2: Ornatube takes issue with the fact that two wall thicknesses (.047" and .063") were used in the CV calculations while Ornatube manufactures LWRT with seven different wall thicknesses (0.047", 0.063" 0.072", 0.083", 0.095", 0.120", 0.018"). Ornatube argues that the result is an overstated CV, as the two wall thicknesses used in the CV are the smallest and, therefore, have the highest production costs.

Department's Position: We disagree. Because the respondent's cost information was so deficient, the Department, in accordance with section 776(c) of the Act, used BIA in its CV calculations. Due to the fact that petitioners' submission, containing cost information for only two wall thicknesses, was the only relevant data we had on the record, the Department reaffirms its use in the CV calculations. The Department matched the smallest wall thickness (with the highest associated cost) only with products with a like wall thickness. All other LWRT was matched with 0.063" LWRT, therefore giving the respondent the benefit of the lowest costs on the record.

Comment 3: The petitioners argue that the Department's methodology understates the cost of ("COM"), and therefore CV, in two ways.

The petitioners first argue that the Department should include in COM both conversion overhead and conversion yield loss. The petitioners recognize the Department's inclusion of conversion yield loss in its calculation of the cost of production of U.S. sales, but they argue that its exclusion from COM results in a lowered COM on which the selling, general and administrative expense ("SG&A") was calculated for purposes of determining CV. Petitioners also argue that conversion overhead is part of factory overhead and must be included in COM.

Second, the petitioners contend that the Department erred in calculating the cost of production of the U.S. sales by adding COM, yield loss expense and an SG&A expense equal to the higher of the conversion overhead factor or ten percent of COM. The petitioners argue that the actual cost of production is the sum of the properly calculated COM (including overhead) and SG&A expense. The petitioners also argue that the SG&A expense is determined by multiplying the total COM (including overhead) by the company's SG&A percentage, which may not be less than ten percent of COM.

The respondent argues against all adjustments to CV.

Department's Position: The Department agrees with petitioners' argument that COM was understated by both conversion overhead and conversion yield loss, thereby understating SG&A as well. The CV calculation has been adjusted accordingly.

The Department agrees that the cost of production of the U.S. sales should be the sum of COM (including overhead and yield loss expense) and the SG&A expense which may not be less than ten percent of COM, rather than the sum of COM, yield loss expense and an SG&A expense equal to the higher of the conversion overhead factor or ten percent of COM. The CV calculation has been adjusted accordingly.

Comment 4: The petitioners argue that the LWRT sold to the United States on which the respondent claimed a duty drawback was made with imported coil; therefore, they contend that the Department should use the average price of steel coil imported into Taiwan as best information available for steel coil costs for those sales, rather than the average price of steel exported from Taiwan.

The respondent argues that petitioners' calculation of the cost of imported coil, which was calculated by averaging the FOB value of hot- and cold-rolled coil exported from Taiwan and adding the rebate that Ornatube received from China Steel, was inaccurate because Ornatube manufactures its own cold-rolled coil for use in LWRT.

Department's Position: The Department agrees with the petitioners' argument that for all sales on which respondent claimed a duty drawback, CV should be based on the cost of

imported coil. The Department has adjusted the CV calculation accordingly.

Although respondent's COP questionnaire response states that it manufactures cold-rolled coil for use in LWRT, the respondent has failed to provide adequate information on the cost of manufacturing this cold-rolled coil. Therefore, as BIA the Department is using the information provided by the petitioner (see our response to Comment 1).

Comment 5: The petitioners argue that it is inappropriate to offset U.S. sales commissions with home market indirect selling expenses in the calculation of CV because the Department is constructing the value of U.S. sales. The petitioner states that by doing so, the addition of the commission to CV is either partially or wholly negated.

Department's Position: The Department disagrees with the petitioners' contention that home market indirect selling expenses should not be used to offset U.S. sales commissions. Section 353.56(b)(1) of the Department's regulations states that if sales commissions are paid in one market and not in the other, the Secretary normally will make a reasonable allowance for indirect selling expenses, not to exceed the lesser of the indirect selling expenses incurred in one market or the commissions allowed in the other market. Accordingly, we have offset U.S. sales commissions with home indirect selling expenses in the calculation of CV.

Comment 6: The petitioners allege that CV must be adjusted by adding the imputed cost of credit to home market sales because there is a lag between the data of shipment and the date of payment on home market sales.

Department's Position: The Department disagrees with petitioners. In accordance with § 353.50(a)(2) of the Department's regulations, the Department is required to include general expenses (e.g., general and administrative expenses, general research and development, direct and indirect selling expenses and credit expenses) in all constructed value calculations (See Final Results of Antidumping Duty Administrative Review; Certain Values and Connections of Brass for use in Fire Protection Systems from Italy (55 FR 8971, 8973, March 9, 1990)). The Department has correctly applied the methodology in its calculation of constructed value by applying the statutory ten percent for SG&A expenses (which includes credit expenses) to COM.

Final Results of the Review

As a result of our comparison of United States price to foreign market value and the correction of a computer programming error in our preliminary analysis, we determine that the following margin exists for the review period:

Manufacturer/ exporter	Period of review	Percent margin
Ornatube	03/01/90–02/28/91	18.05

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual difference between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 752(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-vale investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 18.05%. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with § 353.34(d) of the Commerce Department's regulations (19 CFR 353.34(d)). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–13517 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–810]

Preliminary Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes or Annika L. O'Hara, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5050 or 377–0588, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Brazil of the subject merchandise.

Case History

Since the publication of the notice of initiation in the **Federal Register** (56 FR 52530, October 21, 1991), the following events have occurred.

A. Change of Period of Investigation

On January 22, 1992, we changed the period of investigation ("POI") from calendar year 1990 to calendar year 1991 so that our investigation would cover a more recent time period.

B. Staging of the Questionnaire

On December 17, 1991, the respondents requested that the Department stage the questionnaire on upstream subsidies. According to the respondents' proposal, the first stage would only request the data necessary for the Department to make a competitive benefit determination, while the second stage would cover alleged subsidies provided to the companies that supplied Persico Pizzamiglio ("Persico") with hot-rolled carbon steel in flat-rolled coils ("flat-rolled steel"), which is the main input product used in the production of circular welded non-alloy steel pipe ("standard pipe"). The respondents argued that staging the questionnaire in this way would save both the Department and the upstream respondents time and expense.

On February 14, 1992, we informed the respondent companies and the Government of Brazil ("GOB") that we would not stage the questionnaire. We explained that if the Department were to find a competitive benefit, and the respondents failed to provide a response regarding subsidies to the companies that supplied Persico with flat-rolled steel (hereinafter: "the flat-rolled steel producers/suppliers" or "the upstream suppliers"), the Department would view the response as incomplete and would resort to best information available ("BIA"). However, if the Department were to find no competitive benefit, it would not use BIA because of a failure to provide a response concerning subsidies to the upstream suppliers.

C. Limiting Respondent Selection

On December 17, 1991, the respondents also requested that the Department only require Persico to respond to the Department's questionnaire because of its share of the exports of standard pipe from Brazil to the United States. On December 30, 1991, we decided that only Persico would be required to answer our questionnaire, because of its share of the standard pipe exports to the United States.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finishing rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

A. Analysis of Direct Subsidy Programs

According to the questionnaire responses, Persico did not use any of the following programs during the POI:

1. Exemption from the IPI tax and import duties under the BEFIEX program.
2. Preferential export financing under the FINEX program.
3. Preferential export financing under the PROEX program.

No other programs were alleged by the petitioners or exported in the questionnaire responses.

B. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of standard pipe in Brazil receive benefits in the form of upstream subsidies.Section 771A(a) of the Act defines upstream subsidies as follows:

> The term "upstream subsidy" means any subsidy * * * by the government of a country that:
>
> (1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy. The absence of any one element precludes the finding of an upstream subsidy.

1. Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

> * * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of the merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366, May 31, 1989)) offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

> * * * In evaluating whether a competitive benefit exists * * * the Secretary will determine whether the price for the input product is lower than:
>
> (1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or
>
> (2) A world market price for the input product.

Therefore, in determining whether the price the standard pipe producer would have paid in an arms-length transaction exceeds the price it actually paid for its allegedly subsidized input—flat-rolled steel—we first look for the price at which the standard pipe producer could have bought the input from an unsubsidized supplier in Brazil. During the POI, all Persico's flat-rolled steel suppliers received countervailable subsidies and we have no information on other suppliers. Lacking an unsubsidized domestic price, we look to world market prices as a potential benchmark. Since there is no one published world market price for the input product, flat-rolled steel, we constructed such a price for calendar

year 1991 by averaging the following data:

(a) Prices published in the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in the member countries of the European Coal and Steel Community ("ECSC");

(b) Prices published by the Metal Bulletin for "hot coil" traded on the steel trading exchange in Brussels;

(c) Prices published by the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in Latin America;

(d) Export prices for U.S. flat-rolled steel as provided by the U.S. Census Bureau (these data and the data from the two sources listed below include only the prices for the three HTS categories of hot-rolled steel in flat-rolled coils which, according to Persico, correspond to the steel it uses in its production of standard pipe);

(e) Export prices for Korean hot-rolled steel in flat-rolled coils as provided by official Korean export statistics; and

(f) Export prices for Japanese hot-rolled steel in flat-rolled coils as provided by official Japanese export statistics.

We collected the prices listed under (a) through (c) on a weekly basis and the prices listed under (d) through (f) on a monthly basis. We then calculated a simple average of these prices for each month, expressed in U.S. dollars per metric ton.

In developing this benchmark, we used f.o.b. world market prices rather than c.i.f. prices, which differs from our practice in previous upstream subsidy investigations (see Steel Wheels From Brazil; Final Affirmative Countervailing Duty Determination (54 FR 15523, April 18, 1989) ("Steel Wheels") and Certain Agricultural Tillage Tools From Brazil; Final Affirmative Countervailing Duty Determination (50 FR 34525, August 26, 1985)). Based on extensive comments submitted by petitioners and respondents on this issue, we have preliminarily determined that the proper focus of a competitive benefit inquiry is the price that would exist in Brazil if the input suppliers did not receive subsidies. When it is not possible to observe this price directly because all the input suppliers receive subsidies and we are forced to find a surrogate for this price, we turn to a world market price. however, in doing so, we are still attempting to create the price that would exist for the input product in Brazil but for the subsidies. Accordingly, it would be inappropriate to include ocean freight in the benchmark, since such freight charges would not have been incurred by Persico purchasing in the domestic market.

Using f.o.b. prices, we calculated the weighted average price Persico paid each of its suppliers during the POI. (Persico has requested that the names of its suppliers be treated as proprietary information.) We compared these weighted average prices to identically weighted world market prices. We found that during the POI, only one Brazilian steel producer sold flat-rolled steel to Persico at a price below the world market price. Therefore, we preliminarily determine that Persico received a competitive benefit from only one of its steel suppliers. Since we found no competitive benefit arising from purchases from the other steel suppliers, there is no need to analyze these other steel suppliers further.

2. Subsidies Bestowed Upon Input Product

a. *Upstream subsidy programs preliminarily determined to be countervailable.* We preliminarily determine that benefits were bestowed with respect to flat-rolled steel, a substantial input product used in the manufacture or production in Brazil of standard pipe, under the following programs:

i. Government equity infusions. Historically, the GOB has been the principal owner of the Brazilian steel industry, primarily through the state-owned holding company Siderurgia Brasileira S.A. ("SIDERBRAS"). In March 1990, the GOB decided to liquidate SIDERBRAS and privatize its steel mills, including the one steel producer subject to our analysis in this determination. Since the beginning of the privatization process, which is expected to be completed in 1992 or 1993, this steel producer has operated largely as an independent entity. SIDERBRAS ceased operations following the GOB's March 1990 liquidation decision and did not exercise any operational or financial control over its subsidiary during the POI.

According to the questionnaire responses, the one steel producer under investigation has received government equity infusions, mostly from SIDERBRAS, in the form of cash transfers and debt assumptions in return for equity. The equity infusions were made pursuant to two GOB plans:

(1) The Stage III Expansion Project for the state-owned steel mills, which was initiated in 1975 and completed in 1988. The purpose of this project was to expand the Brazilian steel industry's production capacity, improve the quality of its products, and reduce its costs. Only steel companies received assistance under this project; and

(2) The Financial Restructuring Plan for SIDERBRAS, which was approved in January 1987 and completed in 1991. The objective of this plan was to stabilize the financial condition of the steel industry, offset the adverse effects of delays in the implementation of the Stage III Expansion Project, and reduce the steel companies' debt load. Only steel companies were eligible to participate in this plan, which replaced the Stage III Expansion Project.

We have consistently held that government provision of equity does not *per se* confer a subsidy (see *e.g.*, Steel Wheels). Government equity infusions bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. Therefore, we examined whether the steel producer was a reasonable investment (a condition we have termed "equityworthy") in order to determine whether the equity infusions were inconsistent with commercial considerations.

A company is a reasonable investment if it shows the ability to generate a reasonable rate of return within a reasonable period of time. To make this determination, we examine the company's financial ratios, profitability, and other factors, such as market demand projections and current operating results to evaluate its current and future ability to earn a reasonable rate of return on investment. The steel producer analyzed in this determination was previously found by the Department to be unequityworthy for a certain period of time. Nothing on the record of this investigation leads us to believe that this determination was wrong. For a subsequent time period, we preliminarily determine that the steel producer continued to be unequityworthy.

Therefore, based on our analysis of the information on the record and a previous determination, we conclude that the company was unequityworthy in each year it received an equity infusion. Accordingly, we determine that the equity infusions made into this steel company by the GOB were inconsistent with commercial considerations and may confer a subsidy.

To the extent that we find government investment to be commercially unreasonable and the government's rate of return on its investment less than the national average rate of return on investment, we consider the investment to provide a countervailable benefit. We examine the "rate of return shortfall" for the POI, which is the difference between the national average rate of return on equity during the POI and the steel

company's rate of return on equity. If no shortfall exists for the POI, there is no countervailable subsidy for that year. If a shortfall does exist, we multiply the rate of the shortfall by the amount of the original equity infusion to find the benefit for the POI.

Due to inflation, the nominal values of the original equity infusions have increased substantially. We have, therefore, used the indexed values of the equity infusions in our calculations. In its response to our questionnaires, the steel producer used the following indices when correcting the monetary value of the equity infusions:

(a) For 1977–1990: the values of the BTN (Brazilian Treasury Bill) as provided in notice RF 45/90 issued by the GOB; and

(b) For 1991: the FAP (Equity Adjustment Factor) index as published by the Brazilian Treasury.

For each equity infusion, the nominal amount received was converted into a BTN or FAP equivalent by dividing the nominal amount received by the value of the BTN/FAP. To obtain the 1991 value of the equity infusions, we multiplied the BTN/FAP equivalents by the value of the FAP on December 31, 1991, in order to correct the value of all equity infusions to this date.

We measured the rate of return for the steel producer by dividing its net result in 1991 by its total capital. We then compared the result with the national average rate of return on equity in Brazil in 1991, as reported in the January 1992 edition of Exame, a Brazilian business publication. This national average rate of return on equity is only based on the first three quarters of 1991. Since the rate of return for the whole year was not available at the time of this preliminary determination, we used the data for the first three quarters of 1991 as the best information available. We will use the average rate of return for the entire year in our final determination if it is available by then. The steel producer's rate of return on equity was lower than the national average of 1.8 percent. The difference between the company's rate of return on equity and the national average rate of return on equity constitutes the rate of return shortfall. We multiplied the rate of return shortfall by the December 31, 1991, value of all equity infusions provided to the company that we have found to be inconsistent with commercial considerations. Finally, we divided this benefit amount by the December 31, 1991, value of the steel producer's total sales for 1991.

On this basis, we determine that the subsidy to the steel producer from the government equity infusions was 10.09 percent *ad valorem*.

ii. IPI incentives. This program, which consists of a rebate of the IPI tax (Imposto sobre Produtos Industrializados, a value-added sales tax paid on domestic sales of industrial products), was established by Decree-law 1.547 in 1977. Law 7.988 of December 28, 1989, lowered the rebate from 95 percent to 47.5 percent, effective retroactively to January 1, 1989. However, projects which had been authorized before December 28, 1989, would still be granted a 95 percent reduction of the IPI tax. Steel producers are eligible to receive IPI rebates under this program, provided that they meet the following conditions:

(a) They must have an ongoing capital investment project originally approved by the Conselho do Desenvolvimento Industrial ("CDI"; the Industrial Development Council);

(b) They must also receive quarterly approval from the Industry and Commerce Department of the Ministry of Economy, Finance and Planning which ensures that capital investment in the approved project is continuing; and

(c) They must have a net IPI tax obligation in each quarter.

After several amendments to Decree Law 1.547, the program was suspended on April 12, 1990, by Decree Law 8.034. Pursuant to this law, only companies with projects approved prior to April 1990 are eligible to continue to receive benefits from this program. The steel producer received residual benefits under this program during the POI.

Because only steel producers are eligible to receive IPI rebates, we preliminarily determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. To calculate the benefit, we divided the total amount of the IPI rebate received during the POI by the steel producer's total sales in 1991. On this basis, we determine the subsidy provided to the steel producer under this program to be 0.69 percent *ad valorem*.

b. *Upstream Subsidy Programs Preliminarily Determined Not To Be Used by Persico's Steel Supplier.*

i. Long-term loan guarantees.

ii. Government privatization assistance.

iii. Government provision of operating capital.

iv. Fiscal benefits by virtue of a project approved by CDI.

3. Significant Effect

For purposes of determining whether the upstream subsidies have a significant effect on the cost of manufacturing standard pipe, we multiplied the total *ad valorem* subsidy rate on the steel input by the proportion of the total manufacturing cost of standard pipe accounted for by the steel input.

In Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil (50 FR 34525, August 26, 1985), we established thresholds regarding the existence of a significant effect. We presume no significant effect if the *ad valorem* subsidy rate on the input product multiplied by the proportion of the input product in the cost of manufacturing the merchandise accounts for less than one percent. If the result of the calculation is higher than five percent, we presume that there is a significant effect. If the result is between one and five percent, we examine the effect of the input subsidy on the competitiveness of the merchandise. Since in this case, the steel input subsidy allocated to standard pipe yields a rate in excess of five percent, we presume that there is a significant effect. Therefore, based on the above analysis, we preliminarily determine that Persico received an upstream subsidy.

D. Calculation of the Upstream Subsidy to Persico

As discussed above, the weighted average world market price exceeds the weighted average price charged by one of Persico's suppliers. For the same supplier, the difference between the world market price and its price is higher than the amount of the domestic subsidies the supplier received. Therefore, we conclude that there is a full pass-through of the subsidies from this steel supplier to Persico. To calculate the benefit to Persico we multiplied the value of the steel purchased from this supplier by the subsidy received by the supplier and divided this amount by the value of Persico's sales of standard pipe during the POI. Using this methodology, we determine the upstream benefit for Persico to be 9.53 percent.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with Section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of standard pipe from Brazil which are entered or withdrawn from warehouse, for consumption on or

after the date of the publication of this notice in the Federal Register and to require a cash deposit or bond for such entries of the merchandise in the amount of 9.53 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission ("ITC") of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on July 29, 1992, at 9:30 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38(c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 22, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than July 27, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with Section 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-13520 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-806]

Preliminary Affirmative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 9, 1992.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Larry Sullivan, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4105 or 377-0114, respectively.

Preliminary Determination

The Department preliminarily determines that benefits which constitute bounties or grants within the meaning of Section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Venezuela of the subject merchandise.

Case History

Since the publication of the notice of initiation in the Federal Register (56 FR 52532, October 21, 1991), the following events have occurred.

A. Additional Program Allegations

On November 4, and 20, 1991, LTV Corporation (LTV), an interested party, alleged that both standard pipe producers and Siderurgica Del Orinoco (SIDOR), the upstream supplier of flat-rolled steel, benefitted from programs other than those alleged by petitioners and referenced in the Department's notice of initiation. LTV alleged that the VENEXPORT financing program provides bounties or grants to producers or exporters of standard pipe. LTV also alleged that the following actions provide bounties or grants to the producers of hot-rolled steel coil: (1) Cancellation of Government of Venezuela (GOV) equity in SIDOR (resulting in erasure of 3,816 million bolivares of net cumulative losses); (2) Corporacion Venezolana de Guyana Guarantee of SIDOR public debt bonds; and (3) Equity infusions made to SIDOR from 1985 through 1990. On December 31, 1991, we determined that the above-mentioned programs would be included in our investigation.

B. Change of Period of Investigation

On December 17, 1991, the Department held an ex parte meeting with C.A. Conduven (Conduven), a respondent in this investigation. Conduven requested that the Department change the period of investigation (POI) to calendar year 1991, which would be the most recently completed fiscal year.

On December 30, 1991, petitioners requested that the Department not alter the POI to calendar year 1991 because they did not believe SIDOR's annual report would be published prior to the submission of questionnaire responses. On January 14, 1992, we determined that the POI should be calendar year 1991.

C. Staging of the Questionnaire

On December 17, 1991, the respondents also requested that the Department stage the questionnaire so that Conduven would not be penalized if SIDOR, the hot-rolled steel coil producer, did not respond to the upstream subsidy portion of the questionnaire. Conduven argued that without competitive benefit, no pass-through of subsidies can occur. Therefore, if Conduven proved that there was no competitive benefit during the POI, SIDOR's response to the upstream questionnaire was essentially irrelevant.

On January 8, 1992, petitioners objected to Conduven's proposal. Petitioners asserted that the Department should require respondents to submit all program-specific information in order for the Department to make a proper analysis of competitive benefit and that staging the response would only cause delays in the case. On January 9, 1992, we received comments from LTV, objecting to respondents' proposal to stage the questionnaire and for the POI to be calendar year 1991.

On February 14, 1992, we informed Conduven and the GOV that we would not stage the questionnaire. We explained that if we were to find a competitive benefit, and respondents

failed to provide a response regarding subsidies to the upstream supplier, we would view the response as incomplete and would resort to best information available (BIA). However, if we were to find no competitive benefit, we would not resort to BIA for a failure to provide a response concerning subsidies to the upstream supplier.

D. Limiting Respondent Selection

During the December 17, 1991, ex parte meeting, respondents also requested that the Department only require Conduven to respond to the Department's questionnaire, because of its share of the exports of standard pipe to the United States.

On January 16, 1992, we limited the investigation to Conduven, because of its share of the standard pipe exports to the United States.

Scope of Investigation

The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. *All* carbon steel pipes and tubes within the physical description outlined above are included within the scope of this investigation, except line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

I. Analysis of Direct Subsidy Programs

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Venezuela of standard pipe under the following program:

Export Bond Program

The Export Bond Program was established in 1973. The program was designed to provide partial compensation for the requirement that exporters convert export earnings at an official exchange rate significantly lower than the free market exchange rate. The export bonds can only be used for the payment of taxes; they cannot be redeemed for cash. The value of the export bond is based on a percentage of the FOB value of the product exported. The applicable export bond percentage for a company corresponds to that company's national value-added percentage. To receive an export bond, exporters must submit the following export documents to their commercial bank: (1) Commercial Invoice; (2) Bill of Lading; (3) Certificate of Income on Foreign Currency; (4) Export Manifest; and (5) Classification de Valor Agregado Nacional (includes national value-added percentage (VAN)). The application documents are reviewed by the commercial bank and forwarded to the Central Bank of Venezuela which issues the export bond.

Because this program is limited to exporters, we determine that this program confers an export bounty or grant on standard pipe. To calculate the benefit for the POI, we divided the bolivar amount of bonds earned on export sales of standard pipe to the United States by the export sales of standard pipe to the United States. On this basis, we calculated a net subsidy of 4.86 percent *ad valorem*.

On June 13, 1991, before the filing of the petition in this case, the Ministry of Foreign Relations and the Ministry of Finance excluded all manufactured products, including standard pipe, from eligibility for the Export Bond Program. Consistent with our policy of taking into account any measurable program-wide changes that occur before the preliminary determination, we are taking into account the termination of the export bond program for duty deposit purposes. Therefore, for purposes of the preliminary determination, the duty deposit rate for this program is equal to zero for all manufacturers, producers, and exporters in Venezuela of standard pipe.

According to the questionnaire responses, Conduven did not use any of the following programs:

A. *Short-Term FINEXPO Financing*
B. *Preferential Export Financing*
C. *Excessive Tariff Drawbacks*
D. Preferential Financing Company of Venezuela (FIVCA) Financing

According to the questionnaire responses, the following programs do not exist or were terminated prior to the POI:

A. *Provision of Preferential Pricing on Raw Materials for Export*
B. *Venexport Financing*

II. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of standard pipe in Venezuela receive benefits in the form of upstream subsidies. Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term *upstream subsidy* means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to determine the existence of an upstream subsidy. The absence of any one element precludes the finding of an upstream subsidy.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the producer of the subject merchandise, section 771A(b) directs that:

* * * A competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the

product in obtaining it from another seller in an arms-length transaction.

The Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989)) offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

> * * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:
>
> (1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or
>
> (2) a world market price for the input product.

Therefore, in determining whether the price a standard pipe producer would have paid in an arm's-length transaction exceeds the price it actually paid for its allegedly subsidized input—flat-rolled steel—we first look for the price at which the standard pipe producer could have bought the input from an unsubsidized seller in Venezuela. During the POI, Conduven's flat-rolled steel supplier, SIDOR was the only producer of hot-rolled steel coil in Venezuela, and it allegedly received bounties or grants. Lacking an unsubsidized domestic price, we look to world market prices as a potential benchmark. Since there is no one published world market price for the input product, flat-rolled steel, we constructed such a price for calendar year 1991 by averaging the following data:

(a) Prices published in the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in the member countries of the European Coal and Steel Community (ECSC);

(b) Prices published by the Metal Bulletin for "hot coil" traded on the steel trading exchange in Brussels;

(c) Prices published by the Metal Bulletin for "hot-rolled coil (dry)" sold by steel companies in Latin America;

(d) Export prices for U.S. hot-rolled steel in flat-rolled coils as provided by the U.S. Census Bureau (these data and the data from the two sources listed below include only the prices for the three HTS categories of hot-rolled steel in flat-rolled coils which, according to Conduven, correspond to the steel it uses in the production of standard pipe);

(e) Export prices for Korean hot-rolled steel in flat-rolled coils as provided by official Korean export statistics; and

(f) Export prices for Japanese hot-rolled steel in flat-rolled coils as provided by official Japanese export statistics.

We collected the prices listed under (a) through (c) on a weekly basis and the prices listed under (d) through (f) on a monthly basis. We then calculated a simple average of these prices for each month, expressed in U.S. dollars per metric ton.

In developing this benchmark, we used f.o.b. world market prices rather than c.i.f. prices, which differs from our practice in previous upstream subsidy investigations (see Steel Wheels from Brazil; Final Affirmative Countervailing Duty Determination (54 FR 15523, April 18, 1989) and Certain Agricultural Tillage Tools from Brazil; Final Affirmative Countervailing Duty Determination (50 FR 34525, August 26, 1985)). Based on extensive comments submitted by petitioners and respondents on this issue, we have preliminarily determined that the proper focus of competitive benefit inquiry is the price that would exist in Venezuela if the input suppliers did not receive subsidies. When it is not possible to observe this price directly because all the input suppliers receive subsidies and we are forced to find a surrogate for this price, we turn to a world market price. However, in doing so, we are still attempting to estimate the price that would exist for the input product in Venezuela but for the subsidies. Accordingly, it would be inappropriate to include ocean freight in the benchmark, since such freight charges would not have been incurred by Conduven purchasing in the domestic market.

Using f.o.b. prices, we calculated the weighted average price Conduven paid SIDOR during the POI. We compared these weighted average prices to identically weighted world market prices. We found that during the POI, SIDOR sold steel to Conduven at a price above the world market price. Since we find no competitive benefit and, therefore, no significant effect, there is no need to analyze the alleged subsidies provided to SIDOR. We preliminarily determine that Conduven did not receive an upstream subsidy through its purchases of hot-rolled coil from SIDOR because we find no competitive benefit was passed through from SIDOR to Conduven.

Verification

Inaccordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

The estimated net bounty or grant is 4.86 percent *ad valorem*, for all manufacturers, producers, or exporters of standard pipe from Venezuela. However, since the export bond program was terminated prior to our preliminary determination, the duty deposit rate is zero. Therefore, we are not directing the U.S. Customs Service to suspend liquidation of entries of standard pipe from Venezuela.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on July 31, 1992, at 1:00 p.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the Federal Register to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than July 17, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than July 24, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: June 2, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration

[FR Doc. 92-13519 Filed 6-8-92; 8:45 am]

BILLING CODE 3510-DS-M

The Research Corporation of the University of Hawaii; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–036. *Applicant:* The Research Corporation of the University of Hawaii, Honolulu, HI 96826. *Instrument:* Multiple Corer System. *Manufacturer:* Adolf Wuttke GmbH and Company, Germany. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Advice Received:* May 20, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides light cored samples of undisturbed deep-sea sediments (to 4800 m) per drop using a hydraulic damper to minimize topwater sloshing. Private research institutes advise that (1) this capability is pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–13512 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Mississippi/Louisiana Habitat Protection Advisory Panel (Panel) on June 24, 1992, from 9 a.m. until 3 p.m. The meeting will be held at the Sabine National Wildlife Refuge, U.S. Fish and Wildlife Service, Highway 27 South, 3000 Main Street, Hackberry, Louisiana (the refuge is located seven miles south of Hackberry on Highway 27).

The Panel will review the Cameron-Creole Fisheries Study and the Caernarvon Freshwater Diversion Structure Operations Study; and discuss the status of the Bonnet Carre' and Davis Pond Freshwater Diversion Projects, the Coastal Wetlands Planning, Protection, and Restoration Act Activities, and the Corps of Engineers/National Oceanic and Atmospheric Administration's Memorandum of Agreement for Habitat Restoration.

For more information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: June 3, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13470 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Change in Public Meeting Date and Agenda

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and agenda for a public meeting of the Pacific Fishery Management Council's Groundfish Management Team (GMT) originally published in the Federal Register at 57 FR 23205 on June 2, 1992, have been changed as follows. The changes are noted below; all other information originally published on June 2, 1992, remains unchanged.

Change: June 18, 1992, meeting to end at 4:30 p.m.

To: June 19, 1992, and adjournment at 4:30 p.m.

Add Agenda Item: The Council's Enforcement Consultants will meet jointly with the GMT to discuss enforcement and monitoring needs associated with a proposed system of individual fisherman quotas for the sablefish and fixed gear halibut fisheries. The remainder of the meeting will be as announced earlier.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 3, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13471 Filed 6–8–92; 8:45 am]

BILLING CODE 3510–22–M

COMPETITIVENESS POLICY COUNCIL

Announcement of Forthcoming Meetings

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: June 23, 1992; July 21, 1992; September 14, 1992; October 5, 1992; and November 9, 1992; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the U.S. economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

Each meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open each meeting with a report on developments related to the activities of the Council. The work of each of the eight subcouncils will be discussed. The subcouncils include: Capital formation, corporate governance, critical technologies, education, manufacturing, public infrastructure, trade policy, and training. The Council will also consider additional business as suggested by its members.

Dated: Dated June 4, 1992.

C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 92–13528 Filed 6–8–92; 8:45 am]

BILLING CODE 6820–11–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Technical Advisory Committee for Water Management at Army Corps of Engineers Reservoirs

ACTION: Notice.

SUMMARY: The Technical Advisory Committee for Water Management at Army Corps of Engineers Reservoirs was established, effective June 3, 1992, pursuant to section 310, Public Law 101–640, the "Water Resources Development Act of 1990. The Technical Advisory Committee will function in accordance with the provisions of Public Law 92–463, the Federal Advisory Committee Act.

The Technical Advisory Committee will provide advice to the Secretary of the Army and the Assistant Secretary for Civil Works on the research and application of water management methods, practices, and policies for improvement and advancement of the water management programs at Army Corps of Engineers reservoirs. The Committee will be composed of a well-balanced membership comprised of experts in the technical aspects of the management of major reservoirs, and will include individuals from academic, industrial, and scientific sectors.

For further information on the Technical Advisory Committee, contact: Ms. Sandy Riley, Office of the Administrative Assistant to the Secretary of the Army, (703) 697–6900.

Dated: June 4, 1992

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13467 Filed 6–8–92; 8:45 a

BILLING CODE 3810–01–M

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, June 25, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92–463, the Federal Advisory Committee Act, and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13466 Filed 6–8–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 162. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 162 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 1992

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and transportation Allowance Committee for no-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Maximum Per Diem Rates For Official Travel In Alaska, Hawaii, The Commonwealths of Puerto Rico And The Northern Mariana Islands And Possessions of the United States By Federal Government Civilian Employees

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Alaska:						
Adak [5]	$10		$34		$44	10-01-91
Anaktuvuk Pass	83		57		140	12-01-90
Anchorage						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Aniak	73		36		109	07-01-91
Atqasuk	129		86		215	12-01-90
Barrow	86		73		159	06-01-91
Bethel						
05-01—09-30	93		83		176	05-01-92
10-01—04-30	80		81		161	02-01-92
Bettles	65		45		110	12-01-90
Cantwell	62		46		108	06-01-91
Cold Bay	71		54		125	12-01-90
Coldfoot	75		47		122	12-01-90
Cordova	83		77		160	02-01-92
Craig	67		35		102	07-01-91
Dillingham	76		38		114	12-01-90
Dutch Harbor-Unalaska	113		67		180	05-01-92
Eielson AFB						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Elmendorf AFB						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Emmonak	60		40		100	06-01-91
Fairbanks						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
False Pass	80		37		117	06-01-91
Ft. Richardson						
05-15—09-15	174		71		245	05-15-92
09-16—05-14	85		62		147	05-01-92
Ft. Wainwright						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Homer						
05-01—09-30	71		60		131	05-01-92
10-01—04-30	57		58		115	01-01-92
Juneau						
05-01—10-01	88		74		162	05-01-92
10-02—04-30	75		73		148	01-01-92
Katmai National Park	89		59		148	12-01-90
Kenai-Soldotna						
04-02—09-30	94		68		162	04-02-92
10-01—04-01	69		66		135	01-01-92
Ketchikan						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
King Salmon [3]	75		59		134	12-01-90
Klawock	75		36		111	07-01-91
Kodiak	71		61		132	01-01-92

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Kotzebue	125		72		197	01-01-92
Kuparuk Oilfield	75		52		127	12-01-90
Metlakatla	79		44		123	07-01-91
Murphy Dome						
05-15—09-15	100		66		166	05-15-92
09-16—05-14	66		63		129	05-01-92
Nelson Lagoon	102		39		141	06-01-91
Noatak	125		72		197	01-01-92
Nome						
05-15—09-15	87		72		159	05-15-92
09-16—05-14	76		71		147	05-01-92
Noorvik	125		72		197	01-01-92
Petersburg	72		64		136	05-01-92
Point Hope	99		61		160	12-01-90
Point Lay	106		73		179	12-01-90
Prudhoe Bay-Deadhorse	64		57		121	12-01-90
Sand Point	75		36		111	07-01-91
Seward						
05-01—09-30	107		53		160	05-01-92
10-01—04-30	61		48		109	01-01-92
Shungnak	125		72		197	01-01-92
Sitka-Mt. Edgecombe	72		69		141	01-01-92
Skagway						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
Spruce Cape	71		61		132	01-01-92
St. George	100		39		139	06-01-91
St. Mary's	60		40		100	12-01-90
St. Paul Island	81		34		115	12-01-90
Tanana						
05-15—09-15	87		72		159	05-15-92
09-16—05-14	76		71		147	05-01-92
Tok	66		55		121	01-01-92
Umiat	97		63		160	12-01-90
Unalakleet	58		47		105	12-01-90
Valdez						
05-01—09-01	98		53		151	05-01-92
09-02—04-30	84		51		135	01-01-92
Wainwright	90		75		165	12-01-90
Walker Lake	82		54		136	12-01-90
Wrangell						
05-14—10-14	77		61		138	05-14-92
10-15—05-13	62		59		121	01-01-92
Yakutat	70		40		110	12-01-90
Other [3], [4]	63		47		110	07-01-91
American Samoa	85		47		132	12-01-91
Guam	112		75		187	05-01-92
Hawaii:						
Island of Hawaii: Hilo	65		61		126	06-01-92
Island of Hawaii: other	80		61		141	06-01-92
Island of Kauai	99		55		154	06-01-92
Island of Kure [1]			13		13	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES—Continued

Locality	Maximum lodging amount (A)	+	M&IE rate (B)	=	Maximum per diem rate (C)	Effective date
Island of Maui	79		64		143	06-01-92
Island of Oahu	105		55		160	06-01-92
Other	59		47		106	12-01-90
Johnston Atoll [3]	18		18		36	10-01-91
Midway Islands [1]			13		13	12-01-90
Northern Mariana Islands:						
Rota	45		31		76	12-01-90
Saipan	68		47		115	12-01-90
Tinian	44		24		68	12-01-90
Other	20		13		33	12-01-90
Puerto Rico:						
Bayamon						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Carolina						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Fajardo (Including Luquillo						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Ft. Buchanan (Incl GSA Serv Ctr, Guaynabo)						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Mayaguez	84		58		142	07-01-91
Ponce	113		90		203	07-01-91
Roosevelt Roads						
04-16—12-14	66		61		127	07-01-91
12-15—04-15	102		64		166	12-15-91
Sabana Seca						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
San Juan (Incl San Juan Coast Guard Units)						
04-16—12-14	93		90		183	07-01-91
12-15—04-15	116		92		208	12-15-91
Other	63		63		126	07-01-91
Virgin Islands of The U.S.						
05-01—11-30	95		63		158	05-01-91
12-01—04-30	128		66		194	12-01-90
Wake Island [2]	4		17		21	12-01-90
All Other Localities	20		13		33	12-01-90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the Traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $16.25 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US. Government or Contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. government or contractor quarters.

Dated June 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92-13469 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL) Veterans' Status Decision

In a decisional document signed May 13, 1992, the Secretary of the Air Force, acting upon a recommendation by the Department of Defense Civilian/Military Service Review Board, determined that the service of the group known as the "U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command During the Period December 14, 1941 through August 14, 1945" would be considered active duty in accordance with Public Law 95–202. Members of the group are now eligible to receive discharge certificates from the U.S. Air Force and to apply for Department of Veterans Affairs benefits.

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by United Air Lines as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or
2. Were employed by United Air Lines as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and
3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be employment records from United Air Lines headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

POC: Lt Col Robert Dunlap, AFPC, 692–4745

Benefit Information

A determination of "active duty" under Public law 95–202 is "for the purposes of all laws administered by the Veterans' Administration" (38 U.S.C. 106). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Administration Office and your state veterans service office after you have received your Armed Forces discharge documents.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–13402 Filed 6–8–92; 8:45 am]

BILLING CODE 3910–01–M

U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA) Veterans' Status Decision

In a decisional document signed May 13, 1992, the Secretary of the Air Force, acting upon a recommendation by the Department of Defense Civilian/Military Service Review Board, determined that the service of the group known as the "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of TWA's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945" would be considered active duty in accordance with Public Law 95–202. Members of the group are now eligible to receive discharge certificates from the U.S. Air Force and to apply for Department of Veterans Affairs benefits.

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by Transcontinental and Western Air, Inc. as a flight crew personnel (pilot, co-pilot, navigator, flight engineer, radio operator) or
2. Were employed by Transcontinental and Western Air, Inc. as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and
3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any employment records from TWA headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an oversea base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on his flight.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4745.

Benefit Information

A determination of "active duty" under Public Law 95–202 is "for the purposes of all laws administered by the Veterans' Administration" (38 U.S.C. 106). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Administration Office and your state veterans service office after you have received your Armed Forces discharge documents.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–13403 Filed 6–8–92; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Interim Columbia and Snake Rivers Flow Improvement Measures for Salmon

LEAD AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft SEIS.

SUMMARY: The Corps of Engineers (Corps), in cooperation with other Federal agencies, intends to prepare a supplement to the Final 1992 Columbia River Salmon Flow Measures Options Analysis/Environmental Impact

Statement (OA/EIS). The final 1992 OA/EIS, which was released in January 1992, identified a plan of action to assist the instream migration of juvenile and adult salmon in the Lower Snake and Columbia Rivers during the 1992 migration season. This supplement will address water management activities for 1993 and future years until the plan of action may be modified as a result of several ongoing studies including the Columbia River System Operation Review (SOR), the Columbia River System Mitigation Analysis (CRSMA), and the salmon recovery plan to be issued by the National Marine Fisheries Service (NMFS).

The alternatives under consideration are similar to those measures evaluated in the 1992 OA/EIS and identified in formal consultation/conferencing with NMFS on the 1992 plan of action. Elements of a plan of action may include modifying releases from Dworshak, Brownlee, and Grand Coulee Reservoirs, operating the Lower Snake River and John Day reservoirs at lower levels, and various other strategies to improve instream conditions for migrating salmon. Activities may also include testing and evaluation measures to obtain additional biological information. The action is being considered in response to a need to protect stocks of Snake River salmon that have been listed as threatened or endangered species under the Endangered Species Act. The Corps of Engineers, Walla Walla District (Corps), is the lead agency. The U.S. Department of Energy, Bonneville Power Administration (BPA), U.S. Department of the Interior, Bureau of Reclamation (BOR), and the U.S. Department of Commerce, NMFS are cooperating agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Poolman, Department of the Army, Walla Walla District, Corps of Engineers, CENPW–PL–ER, Building 603, Walla Walla, Washington 99362–9265, (509) 522–6619.

SUPPLEMENTARY INFORMATION: The proposed action is being considered under the authority of the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed action. Additional information on the proposed action, alternatives, scoping, and the SEIS process is summarized below.

The proposed action is being considered in response to the listing of the Snake River sockeye salmon as an endangered species and the Snake River fall and spring/summer chinook salmon as threatened species under the Endangered Species Act. The NMFS identified hydropower development in the Columbia River Basin as one of the factors considered to be contributing to the decline of the salmon populations. There is regional support for developing plans to alter the operating regime of Corps reservoirs and other water resources projects during the salmon migration period as a way of increasing the salmon populations. The proposed action includes recommendations from the Biological Opinion prepared by NMFS for the 1992 actions.

The action ultimately proposed for implementation in 1993 and future years, may involve some combination of measures similar to those selected in the 1992 OA/EIS and identified through consultation with the NMFS. These measures could involve releases from Dworshak Reservoir on the North Fork Clearwater River in Idaho, Brownlee Reservoir on the Snake River in Idaho, and Arrow Reservoir on the upper Columbia River in Canada; operating the four Lower Snake River Project reservoirs in Washington at minimum operating pool; releases and flood control transfer involving Lake Roosevelt behind Grand Coulee Dam in Washington; and operating Lake Umatilla behind John Day Dam on the Lower Columbia River in Oregon and Washington at a level below normal pool.

The SEIS will select a plan of action which is within the authority of the cooperating agencies to perform and is implementable in the near future. Those measures which require additional congressional authority, involve construction activities spread over several years, or require extended analysis of the effects on salmon and the environment, are being pursued in the SOR and the CRSMA. The SOR, which was initiated in July 1990, is a joint effort by the Corps, BPA, and BOR to review the multiple-purpose management of Federal projects in the Columbia River Basin and implement a system operating strategy for improving survival of salmon. The CRSMA evaluates modifications or additions to the existing projects which would be necessary to change system operation or which would improve migration conditions for salmon. It is the intent of the Corps and the cooperating agencies to act upon any measure which would improve the survival of the listed salmon species, in a timely manner after the appropriate design and evaluation studies are completed.

Alternatives being considered for the proposed action include a range of water management measures similar to

those evaluated in the 1992 OA/EIS. The SEIS will consider information gained from 1992 water management operation. In addition, alternative ways to obtain biological data including information on anadromous and resident fish populations in some reservoirs and obtaining data on fish movement and survival, if possible, will be considered. Based on preliminary consideration to date, the following have been identified as some of the significant issues requiring analysis in the SEIS:

—Travel time and survival changes for downstream migrating salmonid juveniles
—Changes in upstream passage, timing, and survival of adult salmon
—Effects on resident fish
—Effects on recreation
—Effects on hydropower generation

The Corps, BPA, BOR, and NMFS, as cooperating agencies, will share responsibility for determining and evaluating impacts within their respective areas of jurisdiction and expertise. The cooperating agencies welcome input to the SEIS from affected Federal, State and local agencies, Indian tribes, and other interested organizations and parties. Other agencies desiring status as cooperating parties should submit written requests to the Corps.

The normal range of environmental review and consultation in accordance with other environmental statutes, rules, and regulations shall apply to the proposed action. Of primary importance will be compliance with the Endangered Species Act. Compliance will include preparation of Biological Assessment and formal consultation with NMFS.

Scoping has been an ongoing process with interested parties since preparation of the 1992 OA/EIS. However, the Corps plans to conduct a series of public information meetings in early July 1992 discussing the results of the 1992 drawdown test of Lower Granite and Little Goose reservoirs on the Lower Snake River, providing a status report of the Columbia River System Mitigation Analysis, and presenting information on the SEIS. Meeting times and places will be announced later.

The draft SEIS is tentatively scheduled for release to the public and agencies for review in mid-October 1992.

Robert D. Volz,

LTC, EN, Commanding.

[FR Doc. 92-13436 Filed 6-8-92; 8:45 am]

BILLING CODE 3710-GC-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) For a Proposed Replacement of the Fairfield Atlantic Intracoastal Waterway Bridge, Hyde County, North Carolina

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action consists of replacing the existing swing-span bridge across the Atlantic Intracoastal Waterway (AIWW) at Fairfield, North Carolina, with a high-level, fixed-span, two-lane bridge. The existing bridge is obsolete and presents serious traffic hazards to the public because of restricted carrying capacities. The new bridge would improve the flow of traffic on N.C. 94, reduce operating costs of the bridge, and improve the flow of land and waterborne traffic.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Hugh Heine; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402-1890; telephone: (919) 251-4070.

SUPPLEMENTARY INFORMATION: Replacement of the Fairfield AIWW Bridge was authorized by the River and Harbor Act of 1970 (P.L. 91-611), contingent upon the State of North Carolina contributing 25 percent of the actual first costs. The authorization was amended by the Water Resources Development Act of 1986 (Pub. L. 99-662), to provide for 100-percent Federal funding of the first costs. The State will be required to accept maintenance, replacement, and ownership responsibilities after construction.

1. The replacement bridge would be a two-lane, high-level, fixed-span bridge with a 65-foot vertical clearance over the waterway. A number of bridge types, including post and beam continuous span structure, Delta-frame structure, and prestressed concrete drop-in structure, will be considered. Preliminary investigations indicate that an alignment could be located on either the east or west side of the existing bridge and that the total length of new road, approach, and bridge could vary between 5,500 feet and 6,600 feet. Various alignments will be investigated and a selection will be made based on economic, engineering, environmental, and social considerations.

2. The only alternative to the proposed project being considered, other than the various alignments and bridge designs, will be the no-action alternative.

3. The scoping process will consist of public notification to explain and describe the proposed action, early identification of resources that should be considered during the bridge alignment study, and public review periods. Coordination with the public and other agencies will be carried out through public announcements, letters, report review periods, telephone conversations, and meetings.

a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. A scoping letter requesting input to the study will be sent to all known interested parties in May 1992.

b. The significant issues to be addressed in the DEIS are the impacts of the project on wetlands, fish and wildlife habitat, and the social and economic conditions of the project area. Also to be considered will be the effect of the project on traffic patterns and safe vehicle operation.

c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meetings are planned at this time, but based on the responses received, scoping meetings may be held with specific agencies or individuals as required.

5. The DEIS is currently scheduled for distribution to the public in April 1993 and the Final EIS is scheduled for distribution in August 1993.

Dated: May 21, 1992.

Jason C. Hauck,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 92-13437 Filed 6-8-92; 8:45 am]

BILLING CODE 3710-GN-M

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Proposed Disposal and Reuse of Naval Air Station Chase Field, Beeville, Texas

Pursuant to the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of Naval Air Station (NAS) Chase Field, Beeville, Texas.

Pursuant to 40 CFR 1501.6, the Federal Aviation Administration will be a cooperating agency in the preparation of the EIS.

In accordance with recommendations of the 1991 Base Closure and Realignment Commission, the Navy plans to disestablish NAS Chase Field in September 1993. Operations conducted at NAS Chase Field are currently relocating to NAS Meridian, Mississippi, and NAS Kingsville, Texas. The proposed action involves the disposal of land, buildings, and infrastructure of NAS Chase Field for subsequent reuse. These facilities include an off-station housing area and the Naval Auxiliary Landing Field (NALF) Goliad.

The Navy intends to analyze the environmental effects of the disposal of NAS Chase Field based on the reasonably foreseeable reuse of the property, taking into account uses identified by the Beeville/Bee County Redevelopment Council, determined during the scoping process. It is anticipated that reuse of NAS Chase Field will include, but not be limited to, aviation uses, education or institutional uses, commercial and light industry, office space, wildlife preserve, recreational uses, or a combination of those uses. In accordance with CEQ regulations, the "no action" alternative of Navy retention of NAS Chase Field land, buildings, and infrastructure in caretaker status will also be addressed in the EIS. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered outside the jurisdiction of the Navy.

Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality wetlands, endangered species, cultural resources, and socioeconomic impacts.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeing on June 23, 1992, beginning at 7 pm, at the Bee County Coliseum, Beeville, Texas. This meeting will be advertised in Beeville area newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the

public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address.

Written statements and or questions regarding the scoping process should be mailed no later than July 15, 1992, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, Charleston, SC 29411 (Attn: Mr. Laurens Pitts, Code 20), telephone (803) 743-0894.

Dated June 3, 1992.

Wayne Baucino,

Lt, Jagc, USNR, Department of the Navy, Federal Register Liaison Officer.

[FR Doc. 92-13408 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet June 22-23, 1992, from 9 am to 5 pm, at Naval Weapons Center, China Lake, California. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussions of key issues related to stealth, stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria Virginia 22302-0268, Phone (703) 756-1205.

Dated: May 21, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13406 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on S&T Techbase Strategy for the year 2010 will meet on June 15 and 16, 1992. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Room 915, Arlington, Virginia. The meeting will commence at 8 am and terminate at 5 pm on June 15; and commence at 8 am and terminate at 3 pm on June 16, 1992.

The purpose of the meeting is to provide the Navy with an evaluation of the science and technology "techbase" in the outyears. Discussions will focus on the current and perceived threat that will face the Navy in the year 2010 and the technology that will be required to meet that threat. The agenda will include briefings, discussions, and technical presentations of information involving the current state of Basic Research, Basic Technology and Advanced Technology relative to the perceived threat of the 2010 timeframe. Public disclosure of this information will be likely to reveal national defense secrets and could significantly frustrate implementation of any proposed DON agency actions. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000 Telephone Number: (703) 696-4780.

Dated: May 21, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13404 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Fedeal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on STOVL (Short Take-off/ Vertical Landing) Strike Fighter (SSF) Replacement Aircraft in the 2010-2020 timeframe will meet on June 23 and 24, 1992. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 am and terminate at 6 pm on June 23; and commence at 8 am and terminate at 4 pm on June 24, 1992.

The purpose of the meeting is to provide the Navy with an assessment of the need for an SSF as a multi-mission replacement aircraft for the 2010-2020 timeframe, and identify the key technology issues and trade-offs associated with the SSF versus Conventional Take-off and Landing (CTOL) aircraft. The agenda will include briefings and discussions related to threat projections and future program requirements for the U.S. Navy, the U.S. Marine Corps and the U.S. Air Force, and industry preliminary design efforts for a STOVL/Strike Fighter aircraft. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concering this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: May 20, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-13405 Filed 6-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-409-000, et al.]

Commonwealth Edison Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER92-409-000]

June 1, 1992.

On March 20, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 2, dated October 21, 1991, to the Electric Coordination Agreement (ECA), dated December 31, 1988, between Edison and the Village of Winnetka, Illinois (Village). Take notice that on May 21, 1992, Edison filed additional information regarding Amendment No. 2.

Edison requests expedited consideration of the filing and all effective date of June 1, 1992. Accordingly, Edison requests a waiver of the Commission's Notice Requirements to the extent necessary.

Copies of this filing were served upon the Village and the Illinois Commerce Commission.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Ridge Generating Station, L.P.

[Docket No. QF92-158-000]

June 1, 1992.

On May 26, 1992, Ridge Generating Station, L.P., a Florida limited partnership, 400 North New York Avenue, suite 101, Winter Park, Florida 32789, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located between Lakeland and Winter Haven in Polk County, Florida. The facility will include a boiler and a steam turbine generating unit. The maximum net electric power production capacity of the facility will be 39.6 MW. The primary energy source will biomass in the form of wood waste.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER92-571-000]

June 1, 1992.

Take notice that on May 22, 1992, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and City of Homestead, Florida. FPL requests an effective date of July 1, 1992.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER92-572-000]

June 1, 1992.

Take notice that on May 26, 1992, Consumers Power Company (Consumers) tendered for filing two supplemental agreements which extend the term of agreements under which Consumers provides service to the City of Holland (Holland). One supplemental agreement extends the term of an interruptible wholesale agreement (*i.e.*, Supplement No. 1 to Consumers Rate Schedule FERC No. 66) and increases the maximum amount of service available. The other extends the term of a firm wholesale agreement (*i.e.*, Consumers Rate Schedule FERC No. 66) and provides rates that would go into effect if the agreement is extended again. If that firm agreement is extended again, Consumers will file the new rates.

Copies of the filing were served upon the Michigan Public Service Commission and Holland.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER92-512-000]

June 1, 1992.

Take notice that New England Power Company (NEP), on May 26, 1992, tendered for filing an amendment to its earlier filing in this docket which seeks to terminate all transmission agreements for entitlements from the Yankee Rowe Nuclear Plant.

The proposed amendment concerns only the transmission of the entitlement of Central Maine Power Company (CMP). According to NEP, the purpose of the proposed amendment is to file the original service agreement between NEP and CMP which, according to NEP, was never filed with the Commission due to the initial inclusion of CMP's Yankee Rowe entitlement in the transmission service agreement of Public Service Company of New Hampshire.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER92-582-000]

June 1, 1992.

Take notice that on May 27, 1992, New England Power Company (NEP) filed an amendment to its notices of termination of service under its FERC Electric Tariff, Original Volume No. 3 filed in this docket on April 27, 1992. The termination concerned service to the Holyoke (Mass.) Gas & Electric Department and Westfield (Mass.) Gas & Electric Light Department for transmission of their respective Point LePreau entitlements. Under the amended filing NEP requests acceptance of these service agreements which, according to NEP, apparently were not previously filed with the Commission. NEP requests effective dates of November 1 and November 9, 1982, respectively, for these agreements.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER92-570-000]

June 1, 1992.

Take notice that Florida Power & Light Company (FPL) on May 22, 1992, tendered for filing one revised Exhibit A which provides for the contract demand for the City of Jacksonville Beach under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demand for the City of Jacksonville Beach is June 1, 1992.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Ridge Generating Station, L.P.

[Docket No. ER92-576-000]

June 1, 1992.

Take notice that on May 26, 1992, Ridge Generating Station, L.P. submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Florida Power Corporation.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER92-379-000]

June 1, 1992.

Take notice that on May 15, 1992, The KPL division of Western Resources, Inc. (formally The Kansas Power and Light Company) tendered for filing an amendment to its March 13, 1992 filing in this docket concerning a change to its Federal Power Commission Electric Service Tariff No. 127. KPL states that the amendment is to provide additional cost support for a proposed new point of delivery under its existing interconnection agreement with the City of McPherson, Kansas, Board of Public Utilities. The change is proposed to become effective June 1, 1992.

Copies of the filing were served upon the KPL division of Western Resources, Inc. and the Kansas Coporation Commission.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Hartwell Energy Limited Partnership

[Docket No. ER92-521-000]

June 1, 1992.

Take notice that on May 4, 1992, Hartwell Energy Limited Partnership tendered for filing a petition for an order accepting rates for filing and determining rates to be just and reasonable and waiving certain regulations. The proposed rates are for sales of electric energy and capacity to Oglethorpe Power Corporation from an approximately 300 MW combustion turbine electric generating facility to be located near Hartwell, Georgia and to be owned by Hartwell Energy Limited Partnership.

Comment date: June 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER92-575-000]

June 1, 1992.

Take notice that on May 26, 1992, Wisconsin Electric Power Company (WEPCO) tendered for filing on behalf of itself and Minnesota Power & Light Company (MP), and Interchange Agreement between the two companies and accompanying service schedules setting rates, terms and conditions for sales of negotiated capacity, general purpose energy and economy energy between the companies. MP submitted a certificate of concurrence in the filing.

Copies of the filing have been served on MP, the Minnesota Public Utilities Commission, the Minnesota Department of Public Service, and the Public Service Commission of Wisconsin.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER92-574-000]

June 1, 1992.

Take notice that Union Electric Company, on May 25, 1992 tendered for filing a First Amendment and Attachment to Exhibit B, to the Wholesale Service Agreement of December 7, 1988 between City of Rolla, Missouri, and Union Electric Company.

Union Electric states the purpose of the First Amendment and Attachment to Exhibit B is to provide for a new delivery point between the parties.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER92-580-000]

June 1, 1992.

Take notice that New England Power Company, on May 27, 1992, tendered for filing an Interconnection and Support Agreement between New England Power and Milford Power Limited Partnership. New England Power seeks an effective date of March 20, 1992, the date of execution of the Agreement. The purpose of the Agreement is to interconnect Milford Power Limited Partnership's gas-fired cogeneration facility with New England Power's transmission system.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER92-410-000]

June 1, 1992.

Take notice that on May 15, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an addendum dated May 12, 1992 to the Rate Settlement Agreement between PG&E and the Department of Water Resources of the State of California (DWR) dated March 23, 1992 previously filed with the Commission on March 27, 1992. Pursuant to the Commission Staff verbally requesting PG&E and DWR to change the cap applicable to the California Public Utilities Commission's (CPUC) PG&E Rule No. 2 Cost of Ownership Rate for transmission-level company-financed Special Facilities from 19.7% annually (1.6% monthly) to 18.48% annually (1.54% monthly), PG&E and DWR have amended the Rate Settlement Agreement to reflect this change.

Copies of this filing were served upon DWR and the CPUC.

Comment date: June 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Lakewood Cogeneration, L.P.

[Docket No. QF88-418-003]

June 2, 1992.

On May 19, 1992, Lakewood Cogeneration, L.P. tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides certain technical corrections to the operating and efficiency calculations related to a reduction in the net output of the facility from 237.4 MW to 236.7 MW and a revised and updated copy of the Thermal Sales Agreement with American Eagle Distillation Corporation.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Pasco Cogen, Ltd.

[Docket No. QF92-156-000]

June 2, 1992.

On May 22, 1992, Pasco Cogen, Ltd. of 1100 Town & Country Road, Suite 800, c/o North Canadian Power, Inc., Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Dade City, Florida. This facility will consist of two combustion turbine generators, two heat recovery steam generators and one steam turbine generator. The useful thermal output of the facility will be used in the production of fruit juice concentrate. The maximum net electric power production capacity will be approximately 106.4 MW. The construction of the facility began in February 1992 and is expected to commence operation in July 1993.

Comment date: July 9, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13428 Filed 6-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-519-000, et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP92-519-000]

June 2, 1992.

Take notice that on May 27, 1992, K N Energy, Inc. (K N), P. O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP92-519-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 3 new delivery points for use in an existing transportation service for K N Gas Marketing, Inc. (KNGM), under K N's blanket certificate issued in Docket No. CP83-140-000, *et al.*, all as more fully described in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate the 3 new delivery points on its Tyrone System in Texas County, Oklahoma, and Beaver County, Oklahoma. It is stated that the 3 delivery points would be used for deliveries to Phillips 66 Natural Gas Company, to which K N redelivers the gas it transports for KNGM. It is stated that K N transports natural gas for KNGM under K N's blanket certificate issued in Docket No. CP89-1043-000. It is asserted that the proposal complies with the requirements of part 157, subpart F, of the Commission's Regulations.

Comment date: July 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP92-520-000]

June 2, 1992.

Take notice that on May 27, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-520-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an existing sales service provided to the Town of Lapel, Indiana (Lapel), whose initial service was certificated in Docket No. G-452, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle states that Lapel, which previously elected to receive sales service pursuant to a June 26, 1990, offer of settlement under Panhandle's Rate Schedule SSS (Sole Supplier Service), has now requested termination of service (1,000 Mcf per day contract demand) provided under Rate Schedule SSS so that it may convert to firm transportation service (1,000 dekatherms per day) provided under Panhandle's Rate Schedule SCT (Small Customer Transportation Service). Panhandle proposes that the abandonment authorization be made effective as of May 1, 1992.

Commond date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation Penn York Energy Corporation

[Docket No. CP92-508-000]

June 2, 1992.

Take notice that on May 21, 1992, National Fuel Gas Supply Corporation (National) and Penn-York Energy Corporation (Penn-York, collectively referred to as Applicants, both of 10 Lafayette Square, Buffalo, New York, 14203, filed a joint application pursuant to section 7(b) and 7(c) of the Natural Gas Act, for

(1) A certificate of public convenience and necessity authorizing Natonal to:

(a) Acquire by merger all of Penn-York's facilities;

(b) Provide storage services to all of Penn-York's customers;

(2) An order authorizing the abandonment of:

(a) Penn-York's services and facilities;

(b) National's existing services to Penn-York.

The details of the Applicant's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

The Applicants propose to merge Penn-York into National, and have National provide services to Penn-York's customers in the same manner and for the same rates as Penn-York would have done in the absence of a merger. The Applicants are not seeking authority to build facilities, change the way facilities are operated, or change the rates charged to any National or Penn-York customer.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

El Paso Natural Gas Company

[Docket No. CP92–511–000]

June 2, 1992.

Take notice that on May 22, 1992, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket CP92–511–000 according to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to authorize El Paso to construct and operate two new compressor stations and pipeline replacement on the Havasu Crossover line, this undertaking is known as the West-End Flexibility Project, is more fully set forth in the application on file with the Commission and open to public inspection.

The traditional primary flow of gas on El Paso's system is from the Permian Basin to the West utilizing the South System. Recently, the production and the increase in demand of gas from the San Juan Basin has exceeded the Permian Basin as the largest supply source on the system. As a result, El Paso is seeking to enhance its ability to provide maximum flexibility and greater transportation alternatives by the implementation of the West-End Flexibility Project.

The application states that El Paso is presently able to move up to approximately 61 MMcf/d of gas north and 192 MMcf/d of gas south of the Havasu Crossover line in a west flow mode of operation. In order to direct additional volume bi-directionally and to maximize system operations, El Paso proposes to construct and operate the Dutch Flat and the Alamo Lake Compressor Stations consisting of 12,000 and 6,500 horsepower, respectively. In addition, El Paso will replace 1,200 feet of 30-inch Grade X–52 pipe with 30-inch Grade X–70 pipe above the Bill Williams River in La Paz and Mohave Counties, Arizona. The construction of these facilities will permit the compression and discharge of an additional 450 MMcf/d of gas north and 278 MMcf/d of gas south on the Havasu Crossover line for delivery to western markets. The total estimated cost for the proposed facilities including overhead, contingency and required filing fees is $23,795,550 which will be financed by internally generated funds.

El Paso emphasizes that this proposal is a system enhancement project that will result in increased operational flexibility. The project is not an incremental firm expansion of the West-End System. The addition of the proposed facilities will increase El Paso's capability to move San Juan gas to the South System increasing the flexibility and reliability of the entire system. El Paso's interstate pipeline system will acquire a "backup" in case of weather-induced problems or required maintenance. The "backup" system could shift or divert gas from either the North System or the South System for delivery into Southern California.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–515–000]

June 2, 1992.

Take notice that on May 26, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–515–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Coastal Eagle Point Oil Company (Coastal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation for Coastal, which was authorized by the Commission in Docket Nos. CP63–222 and CP70–193 and carried out according to the provisions of Transco's Rate Schedule X–42. Transco proposes to replace the service with a comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88–328–000. In order to protect Coastal's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92–517–000]

June 2, 1992.

Take notice that on May 26, 1992, Transcontinental Gas Pipe Line Coraportion (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92–517–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Texaco Refining and Marketing Inc. (Texaco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to abandon the transportation for Texaco, which was authorized by the Commission in Docket No. CP71–30 and carried out according to the provisions of Transco's Rate Schedule X–52. Transco proposes to replace the service with a comparable service under blanket authorization pursuant to Transco's blanket certificate issued in Docket No. CP88–328–000. In order to protect Texaco's priority as a shipper, Transco requests a waiver of the priority queue provisions of its tariff.

Comment date: June 23, 1992, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protests with reference to said filing should be on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time requried herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, withing 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If to protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13427 Filed 6-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-60-NG]

Sunrise Energy Co.; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on May 6, 1992, of an application filed by Sunrise Energy Company (Sunrise) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period commencing with the date of first delivery. Sunrise intends to use existing pipeline facilities for transportation of the exported volumes and states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 9, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Sunrise, a Texas corporation with its principal of business in Dallas, is engaged in the marketing of oil and gas. Sunrise proposes to export natural gas, either for its own account or as an agent for other parties, for sale on a short-term or spot market basis to purchasers in Mexico. Sales could be made on a firm or interruptible basis. The arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Sunrise's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13497 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-23-NG]

Universal Resources Corp.; Order Granting Blanket authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Universal Resources Corporation blanket authorization to import up to 50 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-13498 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-56-NG]

Unocal Canada Limited; Application for Blanket Authorization To Import Natural Gas, Including Liquefied Natural Gas, From Canada, Mexico, and Other Countries

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on April 27, 1992, of an application filed by Unocal Canada Limited (Unocal) requesting authorization to import up to 100 Bcf of natural gas, including liquefied natural gas (LNG), from Canada, Mexico, and other countries over a two-year period beginning with the date of first delivery. Unocal intends to use existing facilities for the importation of the gas supplies, and will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below not later than 4:30 p.m., eastern time July 9, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Unocal, a wholly owned subsidiary of Unocal International corporation, is a Canadian corporation that has its principal place of business in Calgary, Alberta. Unocal is engaged in the business of marketing natural gas supplies in the United States and Canada. Unocal requests authorization to import natural gas on a short-term or spot-market basis for its own account, as well as for the accounts of others for which Unocal may agree to act as an agent.

The decision on this application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive and otherwise consistent with DOE import policy. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and

responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Unocal's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 2, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–13496 Filed 6–8–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed the Week of May 8 Through May 15, 1992

During the Week of May 8 through May 15, 1992, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 8 through May 15, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 8, 1992	Gulf/Hayes Gulf, Inc., Atlantic Beach, FL	RR300–150	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The March 22, 1991 Dismissal Letter (Case No. RF300–13884) issued to Hayes Gulf, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Gulf/Freeman's Gulf, Atlantic Beach, FL	RR300–151	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The January 1, 1992 Dismissal Letter (Case No. RF300□12856) issued to Freeman's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Gulf/Kurenda's Gulf, Woodbridge, VA	RR300–149	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The August 28, 1991 Decision and Order (Case No. RF300–12064) issued to Kurenda's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 11, 1992	Texaco/American Breeders Service Washington, DC.	RR321–114	Request for modification/rescission in the Texaco Refund Proceeding. If granted: The December 6, 1990 Decision and Order (Case No. RF321–4828) issued to American Breeders Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
May 12, 1992	Amoco I/Nebraska, Amoco II/Nebraska, Lincoln, Nebraska.	RM21–258 & RM251–125	Request for modification/rescission in the Amoco I & Amoco II Refund Proceeding. If granted: The December 1, 1987 and October 19, 1988 Decision and Orders Case Nos. RM21–88 & RM251–125) issued to Nebraska would be modified regarding the state's application for refund submitted in the Amoco I & Amoco II second stage refund proceeding.
May 12, 1992	Gulf/Howard's Drive-In Woodbridge, VA	RR300–152	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The August 29, 1991 Decision and order (Case No. RF300–12047) issued to Howard's Drive-In would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 12, 1992	Gulf/Gulf Wholesale Woodbridge, VA	RR300–153	Request for modification/rescission in the Gulf Refund proceding. If granted. The October 18, 1988 decision and order (Case No. RF300–1188) issued to Gulf Wholesale would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 14, 1992	Gulf/E.B. Dowden's Gulf Woodbridge, VA	RR300–155	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The March 20, 1992 Dismissal Letter (Case No. RF300–12918) issued to E.B. Dowden's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
May 14, 1992	Gulf/Lewis Big Gulf Woodbridge, A	RR300–154	Request for modification/rescission in the Gulf Refund Proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300–13619) issued to Lewis Big Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
5/11/92	Gieger Bottled Gas Company.	RF340-170.
5/11/92	Beach's Gulf Service	RF300-20000.
5/11/92	H.I. Creech Farm	RF300-20001.
5/11/92	J.T. Baker Chemical Company.	RF300-20002.
5/11/92	Koonce Service Station	RF300-20003.
5/11/92	Moore's Gulf	RF300-20004.
5/11/92	Oklahoma Refining Company.	RF300-20005.
5/11/92	Puckett's Gulf	RF300-20006.
5/11/92	Slikes Gulf	RF300-20007.
5/11/92	Kwik-Chek Grocery	RF300-20008.
5/12/92	Harley Clark Super 100	RF342-208.
5/15/92	Donald Taylor	RF342-209.
5/8/92 thru 5/15/92.	Crude Oil, applications received.	RF272-92294 thru RF272-92352.
5/8/92 thru 5/15/92.	Atlantic Richfield, applications received.	RF304-13035 thru RF304-13102.
5/8/92 thru 5/15/92.	Texaco Refund applications received.	RF321-18600 thru RF321-18613.

[FR Doc. 92-13500 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders the Week of April 27, through May 1, 1992

During the week of April 27 through May 1, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Agway, Inc./Mills' Service Station, et al., 4/30/92, RF324-20, et al.

The DOE issued a Decision and Order granting refunds totalling $5,549 to twenty-four applicants in the Agway, Inc. (Agway), subpart V special refund proceeding. All of the applicants purchased Agway branded products indirectly through the Davis Oil Company of Statesville, Inc. (Davis). Davis was in turn supplied directly by Agway. Davis previously received a refund in the Agway proceeding under the small claims presumption of injury. Since Davis did not attempt to prove injury, the applicants were presumed to have been overcharged in the same manner as Agway's direct purchasers and their claims were evaluated accordingly.

In addition to its purchases of Agway petroleum products, Davis purchased petroleum products from two other sources. Because Davis resold petroleum products without reference to the original source, we presumed that Davis resold its supplier's petroleum products in the same proportion as it had purchased those products. Therefore, because Davis purchased 20 percent of its supply of petroleum products from Agway during the consent order period, the volume of Davis petroleum products purchased by each claimant was multiplied by 20 percent to obtain the proportionate volume of Agway petroleum products that each claimant purchased.

Citronelle-Mobile Gathering, Inc./ United Western Energy Corp., 5/1/92, RF336-17

The DOE issued a Decision and Order concerning an Application for Refund filed by Rio Arriba Minerals, Inc. (Rio Arriba) in the Citronelle-Mobile Gathering, Inc., special refund proceeding. Based upon the refined product purchases of United Western Energy Corp. (United Western), Rio Arriba, a company that purchased certain assets of the Big E. Division of United Western on January 29, 1986, claimed that it was the rightful recipient of a new Citronelle refund based upon United Western's purchases of New England Petroleum Company (NEPCO) products during the consent order period. However, Rio Arriba did not claim that it had acquired all of the outstanding stock of United Western. Rio Arriba also declined to provide a copy of the purchase and sales agreement whereby it acquired assets of United Western. As a result, the DOE concluded that any potential refunds were not among the assets transferred by United Western to Rio Arriba. Since the right to a refund was not conveyed to the buyers, the original owners of United Western retained the right to any potential refunds based upon its purchases. The Application was therefore denied.

New York Telephone, 5/1/92, RF272-89517

The DOE issued a Decision and Order granting an Application for Refund filed by New York Telephone, a provider of subscriber telephone services, in the subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. The States argued that because New York Telephone was regulated by the New York Public Service Commission, its rates were established to cover its operating expenses and to permit a certain rate of return on investment. However, the DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The refund granted to the applicant in this Decision was $134,667.

Ryder Truck Rental, Inc., 4/30/92, RR272-78, RR272-79

The DOE issued a Decision and Order concerning two Motions for Reconsideration filed on behalf of Ryder Truck Rental, Inc. (Ryder), in the subpart V crude oil special refund proceeding. On August 25, 1988, and on January 23, 1990, the two Applications filed on behalf of Ryder (Case Nos. RF272-73139 and RF272-327) were denied because it appeared that Ryder's business was based solely on leasing and renting. Therefore, Ryder was considered to be a reseller, rather than an end-user, for the purpose of the subpart V refund proceeding. In the Motions for Reconsideration, Energy Refunds, Inc., submitted additional information on behalf of Ryder which showed that during the refund period Ryder was engaged in three types of businesses: Short-term truck rentals to consumers; commercial truck services; and contract-carriage operations. Ryder claimed that the three lines of business were considered district and that it wished to pursue a refund for only the refined products that it had purchased and consumed as an end-user. However, five of Ryder's subsidiaries had participated in the Stripper Well refund proceeding and, in doing so, had waived each of the subsidiaries right, as well as that of its parent, Ryder, to participate in any future subpart V refund proceeding based on crude oil overcharges. Consequently, the Motions for Reconsideration were denied.

Quantum Chemical Corp./Smith Oil Co., 4/28/92, RF330-45

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund submitted by Smith Oil Co., in the Quantum Chemical Corporation (Quantum) subpart V special refund proceeding. The basis for the denial was that the total refund the applicant was eligible to receive was less than the $15 minimum refund established by the Quantum Implementation Order.

Shell Oil Co./Barge Transport Co., Inc., 4/29/92, RF315–3309

The DOE issued a Decision and Order granting, in part, an application for Refund filed in the Shell Oil Company subpart V special refund proceeding on behalf of Barge Transport Co., Inc. (Barge). In the Application, Barge claimed a refund based upon its indirect purchases of Shell petroleum products from John W. Stone Oil Distributor, Inc., (Stone). However, in *Shell Oil Co./John W. Stone Oil Distributor, Inc.*, 22 DOE ¶ 85,055 (1992), the DOE had previously determined that Barge's supplier, Stone, had been injured in its direct purchases from Shell, *i.e.*, that it did not pass through any Shell overcharges to its downstream customers. As a result, the DOE concluded that Barge had not been charged a higher price as a result of Shell's alleged overcharges and denied the firm's request for a refund based upon its purchases of Shell products from Stone. However, the DOE granted Barge a refund based upon its indirect purchases of Shell products from suppliers that had not demonstrated injury or that had not filed applications in the Shell proceeding. The total amount of the refund granted in this Decision and Order is $1,113 (comprised of $776 in principal and $337 in interest).

Tesoro Petroleum Corp./Apex Oil Co., 4/27/92, RF326–282

The DOE issued a Decision and Order granting the Apex Oil Co. (Apex) a full volumetric refund of $178,897 in the Tesoro Petroleum Corporation subpart V special refund proceeding. The Apex refund was based upon purchases of 179,777,675 gallons of Tesoro motor gasoline. Apex submitted data which showed banks of unrecovered increased product costs substantially in excess of its full allocable share of the Tesoro consent order fund. In addition, a competitive disadvantage analysis based upon data covering 77 percent of Apex's total gasoline purchases, showed that the firm paid Tesoro prices that were uncompetitively high during the refund period. Accordingly, Apex was granted a full volumetric refund of $144,002 in principal and $34,895 in accrued interest.

Texaco Inc./Lyle's Texaco, 4/29/92, RF321–18581

On July 19, 1990, the DOE issued a Decision and Order in the Texaco Inc. subpart V special refund proceeding in response to an Application for Refund filed by Lyle's Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that her husband operated Lyle's Texaco during the period March through August 1973 and made purchases from Texaco during that period. Subsequently, another applicant filed an Application for Refund based upon Texaco purchases at the same retail location for the period March 1973 to May 1976, a period that encompassed the purchases alleged in support of the Lyle's Texaco Application. The second applicant submitted documentary evidence to support its claim. As a result, the DOE found that Lyle Crowell, the owner of Lyle's Texaco and the operator named in the first claim, ceased operating the outlet before the refund period. Accordingly, the DOE rescinded the refund granted to Lyle's Texaco and directed the applicant to repay the refund which had been granted, with interest. The second Application will be considered in another proceeding.

Texaco Inc./Southside Texaco, 4/29/92, RF321–18580

On August 23, 1990, the DOE issued a Decision and Order in the Texaco Inc. subpart V special refund proceeding concerning an Application for Refund filed by Southside Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that her husband operated Southside Texaco during the period March 1973 to January 1979 and the claim that he had made purchases from Texaco at that location between those dates. Subsequently, another applicant filed an Application for Refund based upon Texaco purchases at the same retail location for the period beginning January 1978. That second applicant submitted documentary evidence to support its claim. Accordingly, the DOE found that Mrs. Westbrook, the widow of the owner of Southside Texaco, should repay, with interest, that portion of the refund attributable to purchases made after January 1978.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Adams ARCO *et al*	RF304-12725	04/27/92
Atlantic Richfield Company/Alger Oil Co., Inc	RF304-38	04/30/92
Atlantic Richfield Company/Chicago and North Western Transportation Company	RF304-3203	04/27/92
Atlantic Richfield Company/John Hector's ARCO #2 *et al*	RF304-13014	05/01/92
Boncosky Transportation, Inc.	RF272-78219	04/30/92
Emsee Transportation, Inc.	RF272-78220	
Chembond Corporation	RD272-29724	04/29/92
Chembond Corporation	RF272-29724	
General Chemical Corporation	RD272-29733	
General Chemical Corporation	RF272-29733	
City of Oklahoma City *et al*	RF272-77719	04/28/92
Clark Oil & Refining Corp./Al's Clark Super 100	RF342-202	04/29/92
Gulf Oil Corporation/Carolina Fuel Company	RR300-140	04/28/92
Shell Oil Company/Cochran Farms, Inc.	RF315-77	05/01/92
Cochran Farms, Inc.	RF315-78	
Shell Oil Company/Kent Oil & Trading Company	RF315-6166	04/29/92
Shell Oil Company/Molner's Shell *et al*	RF315-325	04/27/92
Shell Oil Company/USX Corporation *et al*	RF315-8892	04/27/92
Texaco Inc./Bailie Oil Co., Inc. *et al*	RF321-7892	04/28/92
Texaco Inc./Don's Texaco *et al*	RF321-6301	04/28/92
Texaco Inc./Ellerbe Oil Co.	RF321-18546	04/29/92
Texaco Inc./Holbrook Texaco *et al*	RF321-1043	05/01/92
Texaco Inc./Norman R. Sanders *et al*	RF321-6356	04/30/92
Texaco Inc./Petroleum Marketers, Inc. *et al*	RF321-8585	04/30/92
Texaco Inc./Westbank Texaco	RF321-18587	04/29/92
Time Oil Company/Hoosier Oil, Inc.	RF334-9	04/30/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Albertus Magnus High School	RF272-77885
Benedictine Academy	RF272-77783
Bill Jarrell's Texaco	RF321-6619
Broadway Shell	RF315-87
Broadway Texaco	RF331-9039
Burlington Pike Texaco	RF321-7699
Church of the Blessed Sacrament	RF272-89754
Dale's Shell Service	RF315-60
Dandeneau Country Store	RF321-18444
David Diss Texaco	RF321-9991
Defense Fuel Supply Center (DFSC-G).	RF342-197
Delamo Shell Service	RF315-99
Di Grazia Shell Service	RF315-978
Dick's Self Service	RF300-16124
Ed McMillan's Texaco	RF321-9928
Ed's Motor I	RF321-6621
Ed's Motor II	RF321-6622
Fairgrove Texaco	RF321-9994
Fort Mill Texaco	RF321-9038
Freeman's Texaco Service	RF321-6617
Hankins Shell Service	RF315-250
Interstate Texaco	RF321-9990
John H. Tua	RF321-10841
Johnson's Gulf	RF300-14577
Karol Green	RF300-16193
L & M Texaco	RF321-9997
Madison Silos, Inc.	RF300-11667
Montaup Electric Company	RF323-34
Newby's Texaco	RF321-9193
North Broadway	RF321-7717
Philip's Texaco on Dewey	RF321-9117
Quincy Adams Coal Co., Inc.	RF323-33
R & R Garage & Shell Service	RF315-6637
Roseland Park Texaco Service	RF321-9027
South End Shell	RF315-971
St. Brendan Parish	RF272-91892
St. Casimir R.C. Parish	RF272-77888
St. Charles Parish	RF272-89671
Thruway Gulf	RF300-12990
Under Pass Texaco	RF321-7712
West Pike Shell	RF315-10159

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 3, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-13499 Filed 6-8-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4141-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 9, 1992. For information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning and Evaluation

Title: Total Quality Management Studies (ICR No. 1616.01).

Abstract: This ICR is for a new collection of information in support of the EPA's Total Quality Management (TQM) initiative. This initiative challenges the EPA to develop more efficient and effective methods of doing business. As part of this initiative, EPA outreach programs (hotlines, information clearinghouses, etc.) are seeking to improve their services by conducting "TQM" studies on frequent users. EPA outreach programs conducting TQM studies will gather information, either by mail or telephone questionnaires, on problems that users have encountered with their outreach services. These programs will use this information to develop strategies for improving the quality of their services.

EPA outreach programs conducting TQM studies will request information from the users of their services that may include:

(1) The user's accessibility to the service;

(2) The value the service has provided to the user;

(3) The quality and timeliness of the EPA response;

(4) The demeanor of the EPA representative that helped the user; and

(5) Any additional questions or comments the user might have for the improvement of the service.

An estimated 10 TQM studies (5 mail, 5 telephonic) will be conducted each year. Each study will target an average of 500 respondents for voluntary participation in the study. There are no recordkeeping activities associated with this collection.

Burden Statement: Public reporting burden for respondents subject to this collection of information is estimated at 0.09 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the collection of information.

Respondents: Frequent users of EPA outreach services.

Estimated Number of Respondents: 5,000.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 450 hours.

Frequency of Collection: One-time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: June 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-13486 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4142-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces OMB responses to Agency PRA clearance requests.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1058.04; NSPS (subpart E) for Municipal Incinerators—Reporting and Recordkeeping Requirements; was approved 04/22/92; OMB No. 2060-0040; expires 04/30/95.

EPA ICR No. 0168.03; NPDES Requirements for Approved State

Programs; was approved 04/28/92; OMB No. 2040–0057; expires 08/31/92.

EPA ICR No. 1237.04; State Sludge Management Program Regulations; was approved 04/30/92; OMB No. 2040–0128; expires 07/31/92.

EPA ICR No. 0995.06; Land Disposal Permitting Standards; was approved 05/05/92; OMB No. 2050–0007; expires 05/31/95.

EPA ICR No. 0193.04; NESHAP for Beryllium (subpart C)—Information Requirements; was approved 05/04/92; OMB No. 2060–0092; expires 05/31/95.

EPA ICR No. 1078.03; NSPS for Phosphate Rock Plants (subpart NN); was approved 05/10/92; OMB No. 2060–0111; expires 05/31/95.

EPA ICR No. 1051.05; NSPS for Portland Cement Plant Monitoring Provisions; was approved 05/11/92; OMB No. 2060–0025; expires 05/31/95.

EPA ICR No. 1084.03; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping—40 CFR subpart 000; was approved 05/11/92; OMB No. 2060–0050; expires 05/31/95.

OMB Extension of Expiration Date

EPA ICR No. 1170.03; Collection of Emergency Economic and Regulatory Support Data: Request for Generic Clearance; OMB No. 2070–0034; expiration date extended to 09/30/92.

June 3, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92–13487 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4141–7]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations, that the State of North Dakota has revised its approved Public Water System Supervision (PWSS) Primacy Program. North Dakota has developed drinking water regulations for Total Coliforms that correspond to the National Primary Drinking Water Regulations for Total Coliforms promulgated by EPA on June 29, 1989, FR 5427544). EPA has approved this State program revision. This determination shall become effective July 9, 1992 and was based upon a thorough evaluation of North Dakota's PWSS program which has met the requirements stated in 40 CFR part 142, subpart B.

North Dakota's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 9, 1992. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jack W. McGraw, Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202–2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of North Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of North Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 9, 1992.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) State Department of Health and Consolidated Laboratories, Municipal Facilities Division, 1200 Missouri Avenue, Bismarck, North Dakota, 58505–5520.

FOR FURTHER INFORMATION CONTACT: Marty Swickard, EPA Region VIII 8WM-DW, 999 18th Street, suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1629.

Dated: May 29, 1992.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 92–13489 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

EPA Border Environmental Plan Public Advisory Committee; Open Meeting

AGENCY: U.S. Environmental Protection Agency, Office of International Activities.

ACTION: Notice.

SUMMARY: The EPA Border Environmental Plan Public Advisory Committee was established on March 28, 1992, pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, to advise the Administrator of EPA on matters concerning the Agency's involvement in the protection and enhancement of the environment within the U.S.-Mexico Border Area. EPA, in a **Federal Register** notice dated Tuesday, March 10, 1992 (57 FR 8452), gave the public notice of the establishment of the Advisory Committee, as called for by the Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992–1994) (the "Border Plan"). The Advisory Committee will make recommendations to the Administrator of EPA concerning the implementation of the Border Plan.

TIME AND PLACE: The EPA Border Environmental Plan Public Advisory Committee will meet on June 24, 1992 from 9 a.m. to 3:30 p.m., with a luncheon

break from noon to 1:30 p.m. The meeting will take place at the Picacho Plaza Hotel, 750 North St. Francis Drive, Santa Fe, New Mexico 87501.

AGENDA:

1. Introduction of Advisory Committee members and description of the manner in which the Advisory Committee will perform its functions.
2. Discussion focusing on the implementation of, and any recommended elaboration on, the Border Plan.
3. Selection of Steering Committee members.
4. Combined meeting of EPA's Border Environmental Plan Public Advisory Committee and the committee formed to advise EPA's Mexican counterpart agency, together with relevant U.S. and Mexican officials.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating for interested members of the public, which is limited, will be available on a first-come, first-served basis. Public comments to the Advisory Committee can be made at any time through the submission of written statements. Written statements to be reviewed by Advisory Committee members prior to this meeting must be received prior to this meeting must be received by Sylvia I. Correa, the Designated Federal Officer, at the address or telefax numbers listed below, no later than 5 p.m. on June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Mexico Program Manager, Office of International Activities, Mail Code A–106, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone: (202) 260–4890; telefax: (202) 260–8512 or (202) 260–4470.

Dated: June 2, 1992.

Richard Kiy,

Acting Mexico Program Manager.

[FR Doc. 92–13490 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4141–4]

Ozone Transport Commission for the Northeast United States; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on June 16, 1992.

This meeting is the annual organizational meeting of the Transport Commission in accordance with the By-laws of the Commission. The Commission will deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on June 16, 1992.

PLACE: The meeting will be held at: Holiday Inn, 1 Olympic Drive, Lake Placid, New York 12946 (518) 523–2556.

FOR FURTHER INFORMATION OR PRESS INQUIRES CONTACT: Bruce Carhart, Executive Director, Ozone Transport Commission, 444 North Capitol Street NW., suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 new provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Transport Commission is to deal with appropriate matters within the ozone transport region.

The purpose of this notice is to announce that this Commission will meet on June 16, 1992. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits. Seating will begin at 7:30 a.m.

TYPE OF MEETING: Open.

AGENDA: The meeting begins at 8 a.m. and is expected to last until 3 p.m. In accordance with the Commission's By-laws, at the end of this meeting the Vice Chair will become the Commission's Chair. Therefore, at the June 16, 1992 meeting, the Commissioners will elect a new Vice Chair of the Commission. The term of the Commission's officers is until the end of next year's annual meeting.

The Commission will also receive reports from its committees, particularly on (1) revisions to the Commission's By-laws to enhance participation of non-governmental organizations in the Commission's activities, (2) emissions trading and offset issues, (3) mobile source emissions estimate methodologies and (4) 1992 State Implementation Plan revisions.

A final agenda will be available from the Ozone Transport Commission on Tuesday, June 9, 1992 at the address given for the information contact person.

Dated: June 1, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator, EPA Region II.

[FR Doc. 92–13491 Filed 6–8–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4141–5]

South Cavalcade Street Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the South Cavalcade Street Site, Houston, Texas, with the following current and former owner/operators: Baptist Foundation of Texas, Merchants Fast Motor Lines, Inc., Palletized Trucking, Inc., and Trucking Properties, Inc. A previous settlement with Beazer East, Inc. in the form of a judicially entered Consent Decree (*U.S. v. Beazer East, Inc.*, Civil Action No. H–90–2406, S.D. Texas) provided for implementation of EPA's selected remedy for the site, recovery of 96% of EPA's past costs, and reimbursement of 100% of future oversight costs. The proposed de minimis settlement with the site landowners provides for recovery of the remaining 4% in past costs, secures access for conducting remedial activities, and ensures proper maintenance of existing site facilities to prevent further migration of contamination. EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. Mark Fite, Texas Construction Section, Hazardous Waste Management Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Written comments may be submitted to the aforementioned person within 30 days of the date of publication.

Dated: May 19, 1992.

George Alexander Jr.,

Acting Regional Administrator, U.S. EPA-Region 6.

[FR Doc. 92-13495 Filed 6-8-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 2, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0010.
Title: Ownership Report.
Form Number: FCC Form 323.
Action: Revision of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting and annually.
Estimated Annual Burden: 9,599 responses, 7.166 hours average burden per response; 68,786 hours total annual burden.
Needs and Uses: Each permittee of a commercial AM, FM, TV and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM and TV broadcast station shall file an Ownership Report (FCC Form 323) annually. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed it current Report and that it is accurate, in lieu of filing a new Report. The form has been revised to include fee processing data. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act.

OMB Number: 3060-0214.
Title: Section 73.3526, Local public inspection file of commercial stations.
Action: Revision of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 10,815 recordkeepers; 106.74 hours average burden per recordkeeper, 1,154,393 hours total annual burden.
Needs and Uses: Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to the type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, etc. Section 73.3526(a)(8) requires commercial television broadcast licensees to maintain records sufficient to verify compliance with commercial limits and to maintain records of educational and informational programming designed to serve children's needs. In addition, § 73.3526(a)(9) requires that each broadcast licensee of a commercial radio station place in a public inspection file a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated. On 3/12/92, the Commission adopted a Report and Order, MM Docket No. 91-140, Revision of Radio Rules and Policies. Among other things, this proceeding will require radio licensees who provide programming to another licensee's station in the same market, pursuant to time brokerage agreements, to keep copies of those agreements in their public inspection files, with confidential information blocked out where appropriate. The data is used by the public and FCC to evaluate information about the licensee's performance, to ensure that station is addressing issues concerning the community to which it is licensed to serve and to ensure that radio stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws.

OMB Number: 3060-0368.
Title: Section 97.523, Question pools.
Action: Extension of a currently approved collection.
Respondents: Individuals or households and non-profit institutions.
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 3 recordkeepers; 160 hours average burden per recordkeeper; 480 hours total annual burden.
Needs and Uses: The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination. The information maintained by the VEC's is used to prepare amateur examinations. If this information was not maintained, the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13399 Filed 6-8-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-942-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 26, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-942-DR), dated May 2, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 26, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–13462 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–941–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: May 26, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–941–DR), dated April 15, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 22, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–13460 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–944–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–944–DR), dated May 19, 1992, and related determinations.

EFFECTIVE DATE: May 30, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, dated May 19, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of May 19, 1992:

The City of Lexington, the City of Radford, and Pittsylvania County for Individual Assistance and Public Assistance; and

The City of Lynchburg for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–13461 Filed 6–8–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Emerald Maritime Services, 4700 42nd Ave., SW., #550, Seattle, WA 98116, Thomas M. Alderson, Sole Proprietor.

Sofana Freight Forwarding Corp. USA, 50 Carnation Ave., Blvd. #6, Floral Park, NY 11001, Officer: Roy G. Nester, President.

Airconex, Inc., 161 Prescott Street, East Boston, MA 02128, Officers: Lawrence Giangregorio, President/Stockholder, Stephen George, V. President/Treasurer/Stockholder, John E. Smith, Stockholder, Maria A. DeFeo, Stockholder, Peter R. DeFeo, Assistant Clerk.

Lahyan Y. Diab dba L. Diab Forwarding, 7822 Freehollow Drive, Falls Church, VA 22042, Lahyan Y. Diab, Sole Proprietor.

SCL Shipping (USA) Inc., 150–30 132nd Avenue, rm. 208, Jamaica, NY 11434, Officer: Dennis Choy, Vice President.

South Bay Express of California, 1995 E. El Segundo Blvd., El Segundo, CA 90245, Ruben Posada, Sole Proprietor.

Dated: June 4, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13450 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 90.
Name: W. G. Carroll, Inc.
Address: One Clay Place, P.O. Box 20729 Atlanta, GA 30320.
Date Revoked: May 8, 1992.
Reason: Surrendered license voluntarily.

License Number: 845.
Name: W. N. Proctor Company, Inc.
Address: 115 Broad St., P.O. Box 192, Boston, MA 02101.
Date Revoked: May 8, 1992.
Reason: Surrendered license voluntarily.

License Number: 3088.
Name: Capital Shipping Corporation.
Address: 125 E. Union Ave., E. Rutherford, NJ 07073.
Date Revoked: May 13, 1992.
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 92–13444 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

Spain-Italy/Puerto Rico Island POOL, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 212–011213–028.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties: Compania Trasatlantica Espanola, S.A., Nordana Line A/S, Sea-Land Service, Inc.

Synopsis: The proposed amendment will add a new provision to the Agreement setting forth the distribution of excess pool funds remaining in the Pool Common Fund in the Italian Section of the Pool after the payment of undercarrier compensation for the Pool period beginning July 1, 1991 and ending December 31, 1991.

Agreement No.: 224–010925–001.

Title: South Carolina State Ports Authority/COSCO Terminal Agreement.

Parties: South Carolina State Ports Authority, China Ocean Shipping Company ("COSCO").

Synopsis: The subject modification extends the Agreement between the parties through June 1, 1995.

Agreement No.: 224–200611–001.

Title: North Atlantic Conference of Port Authorities.

Parties: Massachusetts Port Authority, Port Authority of New York and New Jersey, South Jersey Port Corporation, Delaware River Port Authority, Maryland Port Administration.

Synopsis: This modification adds the New Hampshire State Port Authority as a party to the Agreement.

Agreement No.: 224–200630–002.

Title: Port Authority of New York & New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher").

Synopsis: The subject modification permits Maher the continued use of the open area adjacent to its Tripoli Street Container Terminal through July 31, 1992.

Agreement No.: 224–200668.

Title: Georgia Ports Authority/Pan Ocean Shipping Co., Ltd. Terminal Agreement.

Parties: Georgia Ports Authority ("GPA"), Pan Ocean Shipping Co., Ltd. ("Pan Ocean").

Synopsis: The subject Agreement provides for a refund of dockage charges by GPA to Pan Ocean at the end of each month period, based on vessel tonnages and days of dockage.

Dated: June 4, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13451 Filed 6–8–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Deuel County Interstate Banc Company; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Deuel County Interstate Banc Company, Chappell, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Deuel County State Bank, Chappell, Nebraska, and Community Insurance Agency, Inc., Haxtun, Colorado, and thereby indirectly acquire Haxtun Community Bank, Haxtun, Colorado.

In connection with this application, Applicant will engage in general insurance agency activities in a community with a population of less than 5,000 (Haxtun, Colorado) through Community Insurance Agency, Inc., pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13442 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

First American Bank of Virginia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 2, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First American Bank of Virginia, McLean, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First

American Bank of Georgia, N.A. (in liquidation), Marietta, Georgia. **Comments regarding this application must be received not later than June 23, 1992.**

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Wilson Bank Holding Company, Lebanon, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Wilson Bank & Trust, Lebanon, Tennessee.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Rockwood Bancshares, Inc., Eureka, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Rockwood Bank, Eureka, Missouri.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Central Financial Corporation, Hutchinson, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Central Kansas Bankshares, Inc., Hutchinson, Kansas, and thereby indirectly acquire Central Bank & Trust Co., Hutchinson, Kansas.

2. Fourth Financial Corporation, Wichita, Kansas; to merge with KNB Bancshares, Inc., Prairie Village, Kansas, parent of Kansas National Bank and Trust Company, Prairie Village, Kansas.

3. Resource One, Ulysses, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Grant County State Bank, Ulysses, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Roscoe (Delaware), Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

2. Roscoe Financial Corporation, Roscoe, Texas; to acquire 75.1 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13440 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

James Schwertley, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James Schwertley, Missouri Valley, Iowa, Donald Schwertley, Council Bluffs, Iowa, and James King, Mondamin, Iowa; to acquire 100 percent of the voting shares of Overton Bank Shares, Inc., Mondamin, Iowa, and thereby indirectly acquire Mondamin Savings Bank, Mondamin, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Vincent Joseph Riggio, Du Quoin, Illinois; to acquire an additional 2.71 percent, for a total of 13.34 percent, of the voting shares of Du Quoin Bancorp, Inc., Du Quoin, Illinois, and thereby indirectly acquire Du Quoin National Bank, Du Quoin, Illinois.

Board of Governors of the Federal Reserve System, June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13441 Filed 6–8–92; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3382]

RMED International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Colorado-based company, that makes "TenderCare" disposable diapers, and its president from making degradability claims in the future unless they possess competent scientific evidence to substantiate such claims.

DATES: Complaint and Order issued May 14, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Georgianna Forbes, FTC/S–4002, Washington, DC 20580. (202) 326–3158 or 326–3183.

SUPPLEMENTARY INFORMATION: On Wednesday, February 26, 1992, there was published in the Federal Register, 57 FR 6608, a proposed consent agreement with analysis In the Matter of RMED International, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisidctional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

FR Doc. 92–13480 Filed 6–8–92; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–2755]

U.S. Pioneer Electronics Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and modifies the consent order issued in 1975 (40 FR 57197) with Pioneer Electronics (USA) Inc. so that Pioneer is no longer prohibited from unilaterally terminating a dealer who sells Pioneer home-electronics products at a price other than suggested retail price.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DATES: Consent Order issued October 24, 1975. Modifying Order issued May 19, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Eric Rohlck, FTC/S–2155, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the Matter of U.S. Pioneer Electronics Corp. The prohibited trade practices and/or corrective actions as set forth at 40 FR 57197, are deleted, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92–13481 Filed 6–8–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 230]

State Health Departments and Public Health Agencies To Conduct Site-Specific Health Activities

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1992 funds for a grant and/or cooperative agreement program to assist state health departments and public health agencies in conducting site-specific health activities (SSHA) to determine the public health impact of human exposure to hazardous substances at hazardous waste sites or releases. SSHA are to be conducted in communities located near hazardous waste sites for which ATSDR (or a state under cooperative agreement) has prepared a Preliminary Public Health Assessment, Public Health Assessment, Public Health Advisory, or Health Consultation that ATSDR's Health Activities Recommendation Panel (HARP) has evaluated and determined public health actions are warranted. Preference for the SSHA will be given to sites listed in appendix A.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under sections 104(i)(7)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 (42 U.S.C. 9604(i)(7)(A) and (15)).

Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $500,000 is available in FY 1992 to fund approximately 7 awards. It is anticipated that approximately $750,000 will be available in FY 1993 to fund 10 awards. It is expected that the average award will be $71,000, with the range being $10,000 to $100,000. It is expected that the awards will begin on or about September 30, 1992, for a 12-month budget and project period. Recipients in any given year will have to recompete for funding in a subsequent year. Funding estimates may vary and are subject to change.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the awardee, as the direct and primary recipient of PHS funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Accordingly, eligible applicants may enter into contracts (epidemiologic, medical consultant, statistical analysis, environmental sampling, data entry, etc.) as necessary to meet the requirements of the program and strengthen the overall application.

Purpose

The purpose of this program is to assist public health agencies in conducting site-specific health activities that: (1) Assess the public health impact of human exposure to hazardous substances in communities located near specific sites or releases and, (2) determine if comprehensive epidemiologic studies are warranted based on the findings of such site-specific activities that have been determined as needed by HARP.

Pertinent definitions are presented in the following paragraphs:

Site-Specific Health Activity (SSHA)—This activity involves the collection and/or limited evaluation of data and information about a defined population for the purpose of determining the extent of exposure to hazardous substances, and if the possibility of adverse health effects warrants, a comprehensive epidemiologic investigation. Those activities will be undertaken at sites for which HARP has determined that such activities are indicated based on information developed in a Public Health Assessment, Preliminary Public Health Assessment, Public Health Advisory, or Health Consultation performed by ATSDR or by a state through a grant or cooperative agreement with ATSDR.

The following are seven types of site-specific health activities.

1. *Disease-and-Symptom Prevalence Study*—A study designed to measure the occurrence of self-reported disease, that may in some instances be validated through medical records or physical examination if available, and determine those adverse health conditions which may require further investigation because they are considered to have been reported at excess rate. This study design can only be considered hypothesis-generating (55 FR 12019, March 30, 1990).

2. *Biological Indicators of Exposure Study*—A study designed to use biomedical testing or the measurement of a chemical (analyte), its metabolite, or another marker of exposure in human body fluids or tissues in order to validate environmental exposure to a hazardous substance (55 FR 12019, March 30, 1990). This study will require a comparison population and is designed to determine past and/or current exposure(s).

3. *Cluster Investigation*—A review of an unusual number—real or perceived—of health events (for example, reports of cancer, grouped together in time and location). Cluster investigations are designed to confirm case reports; determine whether they represent an unusual disease occurrence; and, if possible, explore causes and environmental factors (55 FR 12019, March 1990).

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th & Pa. Ave., NW., Washington, DC 20580.

4. *Biomedical Study*—Biological testing of persons to evaluate a qualitative or quantitative change in a physiologic function that may be predictive of a health impairment resulting from exposure to hazardous substance(s). This study will require a comparison population and is designed to determine effects associated with past and/or current exposure(s).

5. *Case Study*—The medical or epidemiologic evaluation of a single person or a small number of individuals through interview or biomedical testing to determine descriptive information about their health status or potential for exposure.

6. *Health Statistics Review*—Evaluation of information and/or relevant health outcome data for an involved population, including reports of injury, disease, or death in the community. Databases may be local, state, and/or national; information from private health care providers and organizations may also be used. Databases may include morbidity and mortality data, tumor and disease registries, birth statistics, and surveillance data.

7. *Community Health Investigation*—Medical or epidemiologic evaluation of descriptive health information about individual persons or a population of persons to evaluate and determine health concerns and to assess the likelihood they may be linked to exposure to hazardous substances.

Public Health Assessment—Is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other health recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

Preliminary Public Health Assessment—Is prepared only when preliminary environmental contamination data are available or no relevant health outcome or environmental data exist (e.g., at the time the site is proposed for listing on the NPL). Preliminary Public Health Assessments may be followed by Public Health Assessments if and when additional data become available. Preliminary Public Health Assessments may lead to the determination that specific public health actions, such as biologic testing, are needed.

Health Consultation—Is a written or verbal response to a specific question or specific request for information from ATSDR staff or a request for information about health risks posed by a specific site, chemical release, or hazardous material. Consultations may lead to specific recommendations, including public health actions such as biologic testing. A Health Consultation may need to be prepared and indicated actions performed rapidly in order to mitigate or prevent adverse human health effects from exposure to hazardous substances in the environment.

Public Health Advisory—Is a communication from the ATSDR Administrator to the Administrator of the Environmental Protection Agency (EPA), state health officials, and other pertinent individuals stating ATSDR's concern that a public health threat exists of such importance and magnitude that immediate action should be taken, including biologic testing if indicated. The Public Health Advisory is also provided to the appropriate EPA regional office and state health department.

Health Activities Recommendation Panel (HARP)—Is an ATSDR-wide multidisciplinary panel composed of staff with expertise in several fields including environmental epidemiology, medicine, environmental health, toxicology, and health education. HARP evaluates the data and information developed in Public Health Assessments, Preliminary Public Health Assessments, Public Health Advisories, and Health Consultations using established criteria to determine the appropriate public health activities that should be undertaken in populations whose health is impacted by hazardous waste sites. Site-specific health activities are among the determinations that may be made. ATSDR proposes to provide financial assistance to public health agencies to conduct those site-specific health activities.

Program Requirements

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

ATSDR will provide financial assistance without substantial programmatic involvement to applicants in conducting site-specific health activities to determine the extent of exposure to hazardous substances, and if possible adverse health effects warrant a comprehensive epidemiologic investigation. The program requirements include one of the following:

1. Studies designed to measure the occurrence of self-reported disease;

2. Biomedical testing to validate environmental exposure to a hazardous substance;

3. Review of an unusual number of health events, i.e., reports of cancer;

4. Biological testing to evaluate change predictive of a health impairment resulting from exposure to hazardous substances;

5. Medical or epidemiological evaluation of individuals(s) to determine health status or potential for exposure;

6. Evaluation of health outcome data for a population, including reports of injury, disease, or death; and

7. Medical or epidemiologic evaluation of individual(s) to determine health concerns and assess linkage to hazardous substance exposure.

The activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B below.

B. Cooperative Agreements

In a cooperative agreement, ATSDR will assist the recipient in conducting the activities. The application should be presented in a manner that demonstrates the applicant's ability to address the health issues in a collaborative manner with ATSDR. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below, and the ATSDR will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Background review—review all data and information developed in the Public Health Assessment, Public Health Advisory, Health Consultation, and other appropriate information to identify the population (potentially) exposed to hazardous substances.

b. Study design and implementation—design, develop, and implement a protocol to conduct the necessary study. The protocol will cover all aspects of the project.

c. Quality Assurance/Quality Control—provide a mechanism to ensure the quality of the data and the statistical and/or laboratory procedures used. Develop a schedule for reporting progress to ATSDR.

2. ATSDR Activities

a. Provide technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

b. Consult with and assist in monitoring the collection and handling of information and the sampling and testing activities.

c. Participate in the analysis.

d. Collaborate in the interpretation of the study findings.

e. Provide technical and scientific review of the draft report.

Determination of which instrument to use—applicants must specify the type of award for which they are applying, either grant or cooperative agreement. ATSDR will review the applications in accordance with the appropriate criteria.

Evaluation Criteria

A. Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Applications

a. *Proposed Program*—50%

The extent to which the applicant's proposal addresses: (1) The scientific merit of the proposed project, including approach, feasibility, adequacy, and rationale of the design; (2) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the **Purpose** section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (3) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (4) the proposed community involvement strategy; and (5) the proposed method to disseminate the results to state and local public health officials, community residents, and to other concerned individuals and organizations.

b. *Program Personnel*—30%

The extent to which the proposal has described the (1) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership, and (2) the competence of associates to accomplish the proposed activity and their commitment and time they will devote.

c. *Applicant Capability*—20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed activity.

d. *Program Budget*—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before July 20, 1992. (By formal agreement, the CDC Procurement and Grants Office will act for and on behalf of ATSDR on this matter.)

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or (b) above are considered late applications. Late competing applications *not* accepted for processing may either be returned to the applicant or held for the next review cycle.

3. *Receipt and Review Schedule:* This is a continuous announcement and the proposed timetable for receiving applications and making awards is shown below:

Receipt of new applications	Review date	Award date
July 20, 1992	Aug. 20, 1992.	Sept. 30, 1992.

Future dates for this announcement submission are as follows:

Receipt of new applications	Review date	Award date
Jan. 15, 1993	Feb. 15, 1993.	Mar. 31, 1993.
July 15, 1993	Aug. 16, 1993.	Sept. 20, 1993.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance, may be obtained from Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (Telephone 404–842–6630).

Programmatic technical assistance may be obtained from Dr. Cynthia R. Lewis, Senior Medical Officer, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, (Telephone 404–639–0610).

Please refer to announcement number 230 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: June 2, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

Appendix A—Sites for Which Preference Will be Given For Award for Announcement Number 230

Site Name	State
Air Qualify Petition	CT
Allen Park Clay Mine	MI
Allied Paper	MI
American Cresoting Company	FL
Anderson Equipment	MI
Artic Surplus	AK
Baird & McGuire	MA
Basket Creek Drum Disposal/Drum Disposal Area.	GA
Bofors—Nobel	MI
C&D Recycling	PA
Calvert City Industrial Complex	KY
Carson River Mercury Site	NV
Coeur d'Alene	ID
Chemical Sales	CO
Crossley Farm	PA
Dublin Water	PA
E.I. DuPont De Nemours	NJ
Economy Chrome	KS
Falls Township AKA Corco Chemical	PA
Frontera Creek	PR
Greenwood Chemical	VA
Groton Gratuity	MA
GSX	SC
Hansen Container/Layton Drum	CO
Holton Circle	NH
Industrial Excess Landfill	OH
Jackson Park Housing Area	WA
Jackson Township	NJ
Keyser Avenue Borehole	PA
Marine Shale Processors Inc	LA
Maywood Chemical	NJ
Mitchell Systems	NC
Navajo-Desiderio	NM
New Bedford Harbor	MA
Nutmeg Valley Road	CT
Ottawa Radiation	IL
Parker Landfill	VT
Powell Road Landfill	OH
Precision Plating	CT
Savage Municipal Water	NH
Shaffer Equipment Company	WV
Solvents Recovery	CT
Southeast Rockford	IL
Southern Wood Piedmont	GA
Spiegelbreg & Rasmussen Dump Sites	MI
Stringfellow	CA
Sulfur Bank Mercury Mine	CA
Union Chemical	ME
United Cresoting Company	TX
United Heckathorn	CA
Wausau Ground Water Contamination	WI
Welsh Road Landfill	PA
Zinc Corporation of America	OK

[FR Doc. 92–13448 Filed 6–8–92; 8:45 am]

BILLING CODE 4160–70–M

National Institutes of Health National Cancer Institute

Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on June 10–12, 1992, The Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

This meeting will be open to the public on June 10, 1992, from 7:30 p.m. to 8:30 p.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 11 from 8 a.m. to recess and on June 12 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 809, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: May 28, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–13659 Filed 6–8–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S7, the Office of the Deputy Commissioner for Human Resources is being amended to establish division-level components and functions within the Office of Labor Management Relations (S7C). The new material is as follows:

Section S7C.10 *The Office of Labor Management Relations*—(Organization):

Add:

D. The Division of Labor and Employee Relations Operations (S7CA).

E. The Division of Labor and Employee Relations Policy (S7CB).

Section S7C.20 *The Office of Labor Management Relations*—(Functions):

Delete Items C.1 through C.6.

Add:

D. The Division of Labor and Employee Relations Operations (S7CA).

1. Administers the Master Agreement nationwide. Negotiates midterm contractual issues with the recognized bargaining unit(s). Serves as liaison with HHS on the administration of the National Agreement between HHS and recognized bargaining units.

2. Provides technical and advisory services and expertise to management in establishing management negotiating positions and for representation in third-party proceedings. Coordinates SSA representation in unfair labor practice complaints before the Federal Labor Relations Authority.

3. Develops, implements and evaluates SSA programs involving disciplinary and adverse actions, performance-based actions, grievances, appeals and serious misconduct cases. Provides advisory services to management and prepares documentation for headquarters' managers pertaining to such cases. Provides consultation to SSA management on nonbargaining unit grievances.

4. Represents SSA at unemployment compensation hearings and on management-initiated actions under appeal to the Merit Systems Protection Board and before arbitrators.

5. Provides technical guidance in developing, implementing and administering performance plans and standards.

E. The Division of Labor and Employee Relations Policy (S7CB).

1. Responsible for negotiation, administation and implementation of SSA national labor agreements which include prenegotiation activities, team preparation, advisory services and problem resolution.

2. Maintains files of case law which affect contracts and researches bargaining history relevant to establishing management's position at third-party proceedings and negotiations.

3. Formulates SSA policy for the labor management and employee relations programs, and researches policy questions for management.

4. Negotiates national midterm personnel policy-related issues and coordinates SSA management representation at national-level arbitration, unfair labor practice hearings and national-level meetings with the recognized barging units.

5. Conducts statutory review of all Memoranda of Understanding negotiated agencywide. Administers and maintains arbitration panels.

Dated: May 18, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-13345 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter S5, of the Office of the Deputy Commissioner, Policy and External Affairs, is being amended to reflect the establishment of a new staff within the Office of Public Affairs (S5E). The Regional Support and Special Projects Staff (S5EK5) and the Regional Public Affairs Staff (S5EK6) are being deleted from the Office of External Affairs (S5EK), and the functions and positions combined to create the Regional Affairs Staff (RAS) (S5EM). RAS ensures an effective public information/public affairs program in the 10 regional offices. It defends and provides information about SSA and the Administration to Congress, the media and the public in order to enhance understanding of and support for SSA's programs and efforts. The changes are as follows:

Section S5E.10 *The Office of Public Affairs*—(Organization):

G. The Office of External Affairs (S5EK)

Delete:

3. The Regional Public Affairs Staff (S5EK6).

4. The Regional Support and Special Projects Staff (S5EK5).

Renumber:

"5" to "3."

Add:

H. The Regional Affairs Staff (S5EM).

Section S5E.20 *The Office of Public Affairs*—(Functions):

G. The Office of External Affairs (S5EK)

Delete:

3. The Regional Public Affairs Staff (S5EK6) in its entirety.

4. The Regional Support and Special Projects Staff (S5EK5) in its entirety.

Renumber:

"5" to "3."

Add:

H. The Regional Affairs Staff (S5EM) provides onsite leadership and direction to the regional SSA public affairs program. Analyzes and evaluates regional public affairs activities and issues regional public affairs policies consistent with nationally-issued policies. Serves as the primary regional contact with the news media, community organizations and congressional staffs on questions and problems of a regionwide nature. Plans, directs and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs. Coordinates SSA's regional interaction with other agencies and organizations, including the extension and improvement of social services. Manages and oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Provides direction to the Regional Public Affairs Officers in carrying out SSA and HHS public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing and evaluating public affairs/public information needs of the regions.

Coordinates workgroups representing SSA components for the purpose of solving complex problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

Dated: May 13, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92-13396 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter S5, the Office of the Deputy Commissioner, Policy and External Affairs, is being amended to reflect nomenclature changes to the Director and Deputy Director of the Office of Research and Statistics. The changes are as follows:

Section S5H.10 *The Office of Research and Statistics*—(Organization):

In all instances, change titles of the Director and Deputy Director to Associate Commissioner and Deputy Associate Commissioner.

Section S5H.20 *The Office of Research and Statistics*—(Functions):

In all instances, change titles of the Director and Deputy Director to Associate Commissioner and Deputy Associate Commissioner.

Dated: May 13, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-13410 Filed 6-8-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3362; FR-3190-N-04]

Notice of Deadline Extension; FY 1992 Fund Availability; HOPE for Public and Indian Housing Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending, for the second time, the application deadline for implementation grants in the HOPE for Public and Indian Housing Homeownership (HOPE 1) program for those applicants who were adversely affected in their application preparation as a result of civil disturbances in the City of Los Angeles, California on and following April 29, 1992. Today's document extends the deadline to Monday, June 15, 1992.

DATES: For qualified applicants, the application deadline, previously extended to May 26, 1992, is further extended to June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office Resident Initiatives, Department of Housing and

Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4233.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: On January 14, 1992, HUD published Notices of Fund Availability announcing the availability of FY 1992 funds for the Hope for Public and Indian Housing Homeownership program (HOPE 1) (see 57 FR 1550).

By notice published on May 21, 1992 (57 FR 21666), HUD extended the deadline for applications until May 26, 1992.

In today's Notice HUD is extending the application deadline for implementation grants in the HOPE 1 program for those applicants who were adversely affected in their preparation of applications as a result of the civil disturbances in the City of Los Angeles, California on and following April 29, 1992. For those applicants who qualify, the application deadline is being extended for an additional brief period—from May 26, 1992 until close of business on Monday, June 15, 1992. (No additional extensions of time for applications for the HOPE 1 program are anticipated.)

An applicant may qualify for an extension of the application deadline for Implementation Grants under the HOPE 1 program if:

(A) The applicant submits a certification with its application describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to prepare or submit the HOPE 1 Implementation Grant application was substantially impaired as a result of the civil disturbances in the City of Los Angeles, California, on and following April 29, 1992. If HUD approves the certification, the application will be accepted for review.

A qualified applicant may submit such an application, or may revise and resubmit a previously submitted application, as long as the application is received by the appropriated HUD field office by close of business on June 15, 1992. All submission requirements other than the date by which the applications must be received remain unaffected by this Notice.

Dated: June 3, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92–13515 Filed 6–8–92; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3410; FR 3031–C–02]

Funding Availability (NOFA) for the HOPE for Elderly Independence Program for FY 1992; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for FY 1992; Correction.

SUMMARY: On May 29, 1992 (57 FR 23008), the Department published a NOFA to announce the availability of supportive services and section 8 rental voucher funding for a national competition for Fiscal Year (FY) 1992 for the HOPE for Elderly Independence Demonstration Program. This document makes a correction to section IV of the May 29, 1992 NOFA, which concerns the process for correcting technically deficient applications.

DATES: The due date for submission of applications in response to this NOFA is set forth in the May 29, 1992 Federal Register notice, published at 57 FR 23008. This document does not change this due date.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TTD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This Notice of Funding Availability for the HOPE for Elderly Independence Demonstration Program for Fiscal Year 1992 was published in the Federal Register on May 29, 1992, at 57 FR 23008. Today's document corrects section IV of the May 29, 1992 NOFA, which concerns the process for correcting technically deficient applications.

Section IV of the May 29, 1992 NOFA provided a "complete list" of the items that constitute technical deficiencies, and which may be requested and submitted after the application submission deadline. After publication of the NOFA, the Department realized that certain items were inadvertently omitted from the list. This document therefore corrects section IV of the NOFA to remove the enumerated list of items, and simply provide that curable technical deficiencies are those application items which do not improve the substantive quality of the application relative to the ranking factors.

Accordingly, the following correction is made to FR Doc. 92–12602, published on May 29, 1992 at 57 FR 23008.

SECTION IV—[CORRECTED]

1. On page 23013, in the first and second columns, section IV is corrected to read as follows:

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the application submission deadline date and time specified at section II(b) of the NOFA. The Field Office will initially screen all applications and notify PHAs/IHAs of technical deficiencies by letter. Field Office notification of PHAs/IHAs must be uniform.

The purpose of this process is to assist an applicant in completing a ratable proposal and not to provide for an application to be substantively improved once it has been submitted. Curable technical deficiencies relate only to items which do not improve the substantive quality of the application relative to the ranking factors.

All PHAs/IHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after close of business on the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All PHAs/IHAs are encouraged to review the initial screening checklist provided in section III of the notice. The checklist identifies all technical requirements needed for application processing.

Dated: June 4, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–13510 Filed 6–8–92; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORO80-01-6310-12 (G-2-247)]

Salem District Advisory Council Meeting; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salem District Advisory Council; Correction.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780 that a meeting of the Salem District Advisory Council will be held on Wednesday, August 26, beginning at 1 p.m. The meeting will be held in the Salem District Office, 1717 Fabry Rd. SE, Salem, OR. This document corrects an earlier notice published June 4, 1992 (57 FR 23594).

AGENDA: The agenda for the meeting will include:

(1) Introduction of the new members.
(2) Appointment of a new chairperson.
(3) Discussion of the BLM Salem District Land Use Plan and Preferred Alternative.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 by August 19, 1992. Written comments will also be received for the council's considerations. Summary minutes will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Van W. Manning,

Salem District Manager.

[FR Doc. 92-13438 Filed 6-8-92; 8:45 am]

BILLING CODE 4310-33-M

[NV-030-92-4333-13]

Rules of Conduct and Supplementary Rules, Carson City District, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: In the interest of public safety and for the protection of public and private resources, supplementary rules regulating recreational target shooting, hunting with a firearm and bonfires on public lands that adjoin developed private lands are necessary. The continuing encroachment of urban development upon public land boundaries is eroding the safety zones for these activities. Therefore, the Bureau of Land Management, Carson City District is establishing supplementary rules which compliment local municipal codes and ordinances.

The public lands included in the following descriptions adjoin developed private lands within Carson City:

Mt. Diablo Meridian, Nevada

T. 14N, R. 20E.,
Secs. 2, 3, 4, 9, 10;
T. 15.N, R. 20E.,
Secs. 1, 4, 5, 11-15, 21-28, 32-36;
T. 16.N, R. 20E.,
Secs. 31-36.

The supplementary rules that will apply to the above described lands are as follows:

1. It is unlawful for any person to fire off or discharge:

(a) Any gun, rifle, pistol or other firearm—including shotguns, air rifles and B-B guns—within the Prison Hill Recreation Area.

Prison Hill Recreation Area lands are included in the above description and specifically described as:

Mt. Diablo Meridian, Nevada

T. 14N., R. 20E,
Sec. 2, W½ Lot 2 of NW¼;
Sec. 3, Lots 1 and 2 of NE¼, Lots 1 and 2 of NW¼, N½SW¼, NW¼SE¼;
Sec. 4, E½ Lot 1 of NE¼, E½ Lot 2 of NE¼, NE¼SE¼.
T. 15N, R. 20E.,
Sec. 21, SE¼NE¼, E½SE¼;
Sec. 22, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 27, W½, W½SE¼, SE¼SE¼;
Sec. 28, Lots 26, 27, 32-37, 41-43, E½NE¼, SW¼NE¼, NE¼SW¼, N½SE¼, NE¼SW¼SE¼, SE¼SE¼;
Sec. 33, E½E½;
Sec. 34, All;
Sec. 35, W½W½.

(b) Any gun, rifle, pistol or other firearm—with the exception of shotguns, air rifles and B-B guns—within 5,000 feet of any dwelling, building or other place of public resort.

(c) Any shotgun, air rifle or B-B gun within 500 feet of any dwelling, building or other place of public resort.

(d) Any gun, pistol, rifle, shotgun, air rifle, B-B gun or other firearm in, on or across any public trail, road or highway.

(e) This section does not apply to peace officers or to persons shooting in any regularly established and lawfully authorized and licensed rifle range, gun club or shooting gallery or to any person lawfully discharging a firearm in protection of life and property.

2. It is unlawful to make any bonfire or burn any hay, straw, shavings, pallets or any other combustible material without written permit from the managing agency. (Bonfire being any fire humanly designed that produces a flame height of more than 2' and has no purpose for cooking food.)

(a) A small campfire for the purpose of cooking food or warming persons engaged in recreational camping upon lands approved for such activities is approved unless restricted by seasonal closures.

EFFECTIVE DATE: July 15, 1992.

COMMENT PERIOD: The BLM requests comments from the public concerning establishment of shooting regulations for public lands administered by Carson City District. The comment period will be open until July 1, 1992. Comments received or postmarked after the close of the comment period will not be considered when finalizing these shooting regulations.

FOR FURTHER INFORMATION CONTACT: Blaine Heald, District Ranger, or John Matthiessen, Area Manager, Bureau of Land Management, 1535 Hot Springs Road, #300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTAL INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. These rules will be posted at the local office having jurisdiction over the lands affected.

Dated: May 27, 1992.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 92-13433 Filed 6-8-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-010-4370-08]

Wells Resource Management Plan Draft Wild Horse Amendment and Environmental Assessment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Wells Resource Management Plan (RMP) Draft Wild Horse Amendment and Environmental Assessment (EA).

SUMMARY: Notice is given that the Bureau of Land Management (BLM), has released, for a 30 day public review and comment period, the Wells RMP Draft Wild Horse Amendment and EA. This wild horse amendment is being completed to assist with the management of wild horses in the Wells Resource Area of the BLM's Elko District in the southeastern part of Elko County, Nevada.

DATES: Written comments on the Wells RMP Draft Wild Horse Amendment and EA must be postmarked no later than July 15, 1992 to be considered in the

development of the Proposed Amendment and Final EA.

ADDRESSES: Written comments should be addressed to: District Manager, Bureau of Land Management, ATTN: District Wild Horse Specialist, P.O. Box 831, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Bruce Portwood, Elko District Wild Horse Specialist at the above address or telephone (702) 753–0200.

SUPPLEMENTARY INFORMATION: The Wells RMP Wild Horse Amendment analyzes three alternatives, including the No Action Alternative, for the management of wild horses in the Wells Resource Area of the BLM's Elko District. The purpose of this amendment is to establish wild horse herd management areas, solve problems with checkerboard land pattern conflicts, identify habitat requirements and management practices, establish initial herd size, develop factors for adjustments in herd size, identify constraints on other resources, and combine herd areas for the purpose of improving management of wild horses.

A copy of the Wells RMP Draft Wild Horse Amendment will be sent to all individuals, agencies and groups who have expressed an interest in wild horse management for this part of Nevada.

Copies of the Draft Amendment are also available for review at the following locations:

BLM's Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520–0006
Elko County libraries in Elko, Wells, and Wendover, Nevada.

A Proposed Wild Horse Amendment and Final EA will be completed in response to comments received on the Draft Amendment.

Dated: June 3, 1992.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92–13444 Filed 6–8–92; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

RIN 1018–AB32

Public Meeting for Draft Recovery Plan for the Northern Spotted Owl (Strix occidentalis caurina)

AGENCY: Department of the Interior.

ACTION: Draft Recovery Plan; notice of public meeting.

SUMMARY: The Department of the Interior (Department), under the Endangered Species Act of 1973, as amended (Act), gives notice that three public meetings will be held on the draft recovery plan for the northern spotted owl (*Strix occidentalis caurina*). The intent of these meetings is to review the technical aspects of the draft recovery plan and solicit any new information on that plan. At the meetings, interested parties are invited to participate in asking questions of and discussing the draft plan with members of the Recovery Team. In addition, oral or written comments on the draft plan can be submitted.

DATES: Comments from all interested parties must be received by July 13, 1992. The Department intends to conduct one public meeting at each of the following locations:

1. Friday, June 19, Arcata, California; 1 to 4 and 6:30 to 8:30 p.m.
2. Monday, June 22, Roseburg, Oregon; 1 to 4 and 6:30 to 8:30 p.m.
3. Friday, June 26, Seattle, Washington; 3 to 6 and 7:30 to 9:30 p.m.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Northern Spotted Owl Recovery Team, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon, 97232–4181 (telephone: 503–231–6238). Written comments and materials regarding the plan should be directed to the same address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address. The public meetings will be held at the following locations:

1. Arcata—McKinleyville High School, 1300 Murray Road, McKinleyville, CA.
2. Roseburg—Umpqua Community College, Jacobi Auditorium, 1130 Umpqua College Road, Roseburg, OR.
3. Seattle—University of Washington, Room 130, Kane Hall, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Knowles, Associate Deputy Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (telephone: 202–208–6254), or Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232 (503–231–6118).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the Endangered Species Act of 1973 (Act) is the recovery of endangered and threatened species so that they are again secure, self-sustaining members of their ecosystems. The Act requires preparation of a recovery plan to help guide recovery efforts for any listed species likely to benefit from such a plan. A recovery plan describes actions considered necessary to conserve a species, establishes criteria for downlisting or delisting, and estimates time and cost for implementing recovery measures.

Section 4(f) of the Act, as amended in 1988, (16 U.S.C. 1531 *et seq.*), requires that public notice and an opportunity for public review and comment be provided during development of a recovery plan. On May 15, 1992, the Department published a notice (57 FR 20847) announcing the availability of the draft recovery plan. This supplementary notice announces the time and locations of the public meetings. All information presented during a public comment period must be considered prior to approval of a new or revised recovery plan. Federal agencies must also take these comments into account in the course of implementing an approved recovery plan.

The northern spotted owl (*Strix occidentalis caurina*) occurs in southern British Columbia, Canada; western Washington; western Oregon; and northwest California. Within its range, the owl demonstrates an affinity for older forested habitat. Evidence of significant reduction and fragmentation of suitable owl habitat and of concomitant decline in owl populations have led to concern for its continued survival. A final rule to list the owl as a threatened species was published on June 26, 1990 (55 FR 26114). Details regarding the evidence upon which the listing was based are available in that publication.

On February 15, 1991, a recovery team was appointed and given the charge of preparing a recovery plan for the owl. The team is multidisciplinary in composition, and includes biologists, foresters, economists, attorneys, individuals representing concerned Federal agencies, and representatives of the Governors of the three States involved. This draft recovery plan prepared by the team is available for public review.

Public Comments Solicited

The Department solicits written comments on the recovery plan. Parties wishing to make statements for the record should bring a copy of their statements to the meeting. Oral statements may be limited in length, if the number of parties present at the meeting necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the meeting or mailed to the Service. Written comments will be given the same weight as oral comments. The comment period closes

on July 14, 1992. Written comments should be submitted to the Service in the "**ADDRESSES**" section.

Author

The primary author of this notice is Barry S. Mulder, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181, 503–231–6730.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 1, 1992.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92–13172 Filed 6–8–92; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for following properties being considered for listing in the National Register were received by the National Park Service before May 30, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 24, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Russell County

Pitts, Samuel R., Plantation, E of US 431, S of Southern RR tracks, Pittsview vicinity, 92000819

FLORIDA

Flagler County

Old Bunnell State Bank Building, 101—107 N. Bay St., Bunnell, 92000824

Pinellas County

Pinellas County Courthouse, Old, 315 Court St., Clearwater, 92000828

Volusia County

Young S. Cornelia, Memorial Library, 302 Vermont Ave., Daytona, 92000823

KANSAS

Johnson County

WPA Beach House at Gardner Lake, W shore of Gardner Lake, N of Gardner, Gardner vicinity, 92000826

Shawnee County

Woodward, Chester B., House 1272 SW. Fillmore St., Topeka, 92000817

MINNESOTA

Brown County

Chicago and North Western Depot, Oak St., NW., Sleepy Eye, 92000822

Pine County

District School No. 74, Co. Hwy. 22 N of Co. Hwy. 30, Danforth Township, Sandstone vicinity, 92000820

Ramsey County

Harriet Island Pavillion, 75 Water St., St. Paul, 92000821

NEBRASKA

Douglas County

Omaha Bolt, Nut and Screw Building (Warehouses in Omah MPS), 1316 Jones St., Omaha, 92000816

TENNESSEE

Rutherford County

Jordan, William, B., Farm, 2665 Taylor Ln., Eagleville vicinity, 92000825

WISCONSIN

Richland County

Coumbe, John, Farmstead, Jct. of WI Trunk Hwy. 60 and Co. Trunk Hwy. X, Town of Richwood, Port Andrew, 92000827

[FR Doc. 92–13282 Filed 6–8–92; 8:45 am]

BILLING CODE 4136–65–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202 927–5750 or (202) 927–6211.

Comments on the following assessment are due 15 days after the date of availability:

AB–55–422X, CSX Transportation, Abandonment in Ludington and Mason Counties, Michigan. EA available 5/27/92.

Comments on the following assessment are due 30 days after the date of availability:

AB–55 (Sub–No. 414X), CSX Transportation Inc., Abandonment Exemption in Bell County, KY. EA available 5/22/92.

AB–55 (Sub–No. 417X), CSX Transportation Inc., Abandonment in Randolph County, WV. EA available 5/22/92.

AB–55 (Sub–No. 406X), CSX Transportation, Abandonment in Weakley County, Tennessee. EA available 6/2/92.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 92–13478 Filed 6–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement; Design, Development, and Implementation of Community Corrections Options

May 29, 1992.

This solicitation requests grant proposals for a cooperative agreement to conduct a training and technical assistance project aimed at increasing the effectiveness of community corrections programs by supporting purposeful design, development and implementation efforts in state and local agencies. The Project will be a collaborative venture with NIC's Community Corrections Division. The maximum amount available is $150,000 for a 12 to 15 month period.

Background

Corrections is expressing enormous interest in experimentation with community punishments. Agencies are struggling to provide a more diverse array of sanctions, higher quality supervision, and more accountability for a growing number of offenders—all at a time when resources are decreasing for many agencies. Recent literature on the development of community corrections programs has focused attention on the critical need for more purposeful and disciplined program design, implementation, and evaluation if community sanctions are to achieve articulated and measurable results.

A continuing interest of the Community Corrections Division is to provide assistance to agencies in the early stages of program design and implementation. In 1990, the Division supported a program design workshop for community corrections practitioners Three-person teams from five jurisdictions participated in two, intensive 1-week seminars, which were separated by a period for program design work at participants' home agencies. The workshop was conducted

by the Crime and Justice Foundation, Boston, Massachusetts, under a cooperative agreement grant with NIC. The project cost $90,000.

In the current fiscal year, the Division expanded resources for this project and revised the project strategy to enable more intensive technical assistance to agencies throughout the entire program design, development and implementation process. Changes in project strategies included: The addition of substantial on-site work with each jurisdiction team prior to participating in a single seminar (i.e., dropping the required two-seminar format), greater attention to the development of a sound information base to support rational program design, and expanded attention to the organizational climate in the agencies in which the program changes will occur.

Project services will continue to be provided by a grantee agency under the terms of a cooperative agreement. The Division has chosen the cooperative agreement as its funding vehicle because it provides the most appropriate structure for close collaboration between the Division and the service provider. The Division will be actively involved in all aspects of the work, including the selection of applicants, and the design and delivery of project services. NIC will retain the authority to approve the final selection of participating jurisdictions.

Scope

The goal of the project is to improve program effectiveness by supporting careful program development and more complete implementation of program changes through an integrated program of training and technical assistance. Project services will be provided to teams of community corrections executives and key staff from a limited number of agencies/jurisdictions seeking to introduce, modify, or expand community sanctions for sentenced adult offenders.

The project assumes that for community corrections programs to succeed they must be well designed and fully implemented. This requires agencies to engage in a rational development process, including articulating clear policy on the goals, outcomes, intervention approaches and target populations of the proposed program. The agencies need to weigh the impact of proposed changes on other parts of the criminal justice system, carefully target offender populations, consider cost implications and work to gain the external and internal support of major stake holders and implementers.

The project intends to help community corrections agencies do a better job of designing and implementing whatever changes in program or procedures are important to them in order to achieve their defined outcomes. It will in no way direct or coerce agencies toward specific program choices or activities. It also is important to distinguish this project from the policy development assistance offered by such efforts as the joint NIC/State Justice Institute' Intermediate Sanctions Project. This is not primarily a policy development project. We expect that agencies will be proceeding with the program development tasks of this project within the context of an articulated policy direction.

In sum, the project offers an opportunity to slow down the development process, to resist the often extreme pressure to adopt a "quick fix" or a model solution, and to plan a rational and practical approach.

Agencies Targeted to Receive Project Services

State, county, and large city, adult community corrections agencies (probation, parole, or other community-based agencies) with sufficient staff and financial resources to support the planning process will be eligible to apply for the project. Applicant agencies must demonstrate a strong interest and commitment to implementing the proposed change in their sanctioning and supervision practices. They also need to supervise a large enough population so that the proposed change will impact a significantly sized offender group. They should propose a three person team with the experience and authority to succeed in the program development effort (e.g., the chief administrator, principal planner, and/or key staff responsible for program implementation). The team may also include senior managers or officials, from any branch of government (e.g., a funding agency), who are critical to the successful design and implementation of the program.

Project Activities

A formal announcement of project services will be made by NIC's Community Corrections Division and the grantee. The announcement will describe fully the project approach and services, application requirements, selection criteria, number of participating jurisdictions and the deadline for the receipt of applications.

Prior to selecting agencies for this project, telephone interviews and, in some cases, on-site visits should be conducted with promising candidates to assess both the internal, organizational climate and external factors which may indicate whether the agency is in a good position to engage in program change or innovation at this time.

Project activities will begin with on-site work by the local agency team, assisted by project (grantee) staff, and in some cases by the NIC project manager. The initial work should focus on an assessment of such issues as the level of support for proposed changes among significant stake holders, the quality of data with which to engage the program development process, and the capacity of the agency to conduct the effort including any organizational issues which should be addressed.

Several months after project initiation, a three to five day seminar will be offered to participating teams. Teams may be asked to do advanced reading and other preparation work for the seminar. The seminar should provide a common framework for program development and implementation, offer hands-on experience with some critical aspects of the work, offer opportunities for peer consultation, and result in a work plan for the agency which will include a preliminary outline of further technical assistance needed from the project.

Technical assistance, tailored to the specific needs of each jurisdiction, will be provided for the duration of the project. Participating agencies must make a commitment to attend the seminar and participate in the entire, fifteen month project.

Expenses for travel, lodging, meals and seminar materials will be covered by the project for up to three members of each agency team. Additional team members may attend the seminar at the expense of the jurisdictions, however, such additional participation will depend on the seminar goals and approach.

Application Requirements

Applicants are expected to define the conceptual framework(s) which best applies to this project, propose a number of agencies to receive assistance, discuss the varying purposes of technical assistance to support the work of participating teams, and define the likely content and timing for the seminar for participating agencies. Recognizing the various kinds of expertise required by the project, applicants are to identify the principal members of the applicant team and their specific, relevant expertise. Because this is a cooperative venture with the Community Corrections Division, applicants also should address

how they would perform the project tasks in collaboration with NIC.

At a minimum, applications must address:

• The development and implementation of a plan: to publicize the project and solicit applications from eligible community corrections agencies; develop selection criteria; screen applications with telephone calls and, in some cases, on-site visits; and recommend a number of agencies to receive assistance. As stated earlier, NIC will retain the authority under the cooperative agreement to approve final participant selections.

• The planning, delivery and management of an integrated, technical assistance project, consisting of preliminary on-site work with the participating agencies, a 3 to 5 day seminar, and follow-on technical assistance. Efforts should be made to include community corrections practitioners as peer consultants, where appropriate. This is the primary task of the project.

• Preparation of a report which summarizes the activities of the participating agencies and makes recommendations concerning ways to improve program development and implementation in community corrections agencies. While NIC is interested in summarizing the practical experience and learning from this effort, the primary intent of the project is to maximize the technical assistance to participating agencies. This task is an important but secondary objective of the project.

Application Procedures

1992 Project. Funding for this project has been set at $150,000. This amount will support one cooperative agreement award. Project activities must be completed within a 15 month period.

1993 Project Continuation. Subject to satisfactory performance in the FY 1992 project, the approval of a grant proposal for the FY 1993 continuation project, and the availability of funds; an award will be made to the successful cooperative agreement grantee from this solicitation to continue the project approach with a number of additional jurisdictions. Funding for the 1993 continuation project is set at $150,000.

The following criteria will be used to evaluate applications:

1. The applicant's understanding of the concepts and critical issues in a) the design, implementation and evaluation of community corrections programs; b) planned change in a criminal justice system context; and c) organizational development and management to support major program changes.

2. The applicant's demonstrated capacity to collaborate with other organizations on such efforts.

3. The applicant's experience, both in terms of key project staff and the organization, in working with community corrections agencies on program design issues, planning and conducting training for community corrections practitioners, and delivering and managing technical assistance programs.

4. The soundness of the proposed project objectives and methodology, including the approach to publicizing the program, selecting participants, providing the integrated technical assistance services, and planning and conducting the seminar.

5. The feasibility of the proposed management plan, the specificity of the proposed tasks, the nature of the proposed roles and responsibilities relating to collaboration with NIC, and the identification of realistic milestones and task completion dates.

6. The reasonableness and clarity of the proposed budget and budget narrative.

Applications should not exceed twenty -five, double-spaced, typed pages in length, not including standard grant forms, attachments and appendices. Applications should be received in six copies by the Community Corrections Division, National Institute of Corrections, 320 First Street, NW., Washington, DC 20534, no later than 4 p.m., Eastern time, Friday, July 10, 1992. The street address for overnight mail or hand delivery of applications is 500 First Street, NW., room 700, Washington, DC 20534. If you have any questions regarding the solicitation, please write or call Phyllis Modley, (202) 307–3995.

Dated: June 4, 1992.

George M. Keiser,

Acting Director, National Institute of Corrections.

[FR Doc. 92–13511 Filed 6–8–92; 8:45 am]

BILLING CODE 4910–36–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by July 3, 1992, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by June 24, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Final Descriptive Report Form and Instructions for the State and Regional and the Arts in Education Programs

Frequency of Collection: Annually

Respondents: State governments

Use: Form elicits relevant information and will be used for monitoring state and regional arts agency activities; coordination of Endowment activities with those of state and regional arts agencies; and reporting on the types of projects, groups, and localities benefiting from state and regional arts agency support.

Estimated Number of Respondents: 63

Average Burden Hours Per Response: 2.75

Total Estimated Burden: 173.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92–13426 Filed 6–8–92; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Underserved Set-Aside Advisory Group (Presidential Initiative on Rural Development Section) to the National Council on the Arts will convene on June 22, 1992 from 1 p.m.–4 p.m. via teleconference from room 520 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–13400 Filed 6–8–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators; Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting
Date & Time: July 8, 1992, 9 a.m.–5 p.m.
Place: National Science Foundation, Room 540, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Nadene G. Kennedy, Polar Coordination Specialist, Division of Polar Programs, National Science Foundation Washington, DC 20550, Telephone: 202/357/7817.
Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (Public Law 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Manages plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. Antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protested sites, and other items designed to protect the Antarctic environment.
Agenda:

- Introduction and Overview
- Review of 1991–92 visits to Palmer Station
- Tour Operator's Comments on 1991–92 Season Visits
- 1992–93 Visits to Palmer Station
- 1992–93 Visits to McMurdo Station
- Status of Palmer Station Long-Range Development
- Southwest Anvers Island Multiple Use Planning Area
- USAP Observers Reports
- 1992–93 Season Observer Program
- Review of Sites Visited 1990–92
- Scientific Study on Tourism and the Environment/Long-Term Ecological Research (LTER)
- East Base Clean-up and Future Visits
- Proposed Waste Management and Waste Disposal Regulations
- Legislation and Implementation of the Protocol on Environmental Protection to the Antarctic Treaty
- Administration Legislation
- 17th Antarctic Treaty Consultative Meetings—Tourism Issues
- Other Items.

John B. Talmadge,

Head, Polar Coordination and Information Section, Division of Polar Programs.

[FR Doc. 92–13434 Filed 6–8–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–530]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–74, issued to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority (the licensees), for operation of the Palo Verde Nuclear Generating Station, Unit No. 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The exemption from 10 CFR 50.46, 10 CFR part 50, appendix K, and 10 CFR 50.44 would allow the substitution of up to a total of 80 fuel rods clad with advanced zirconium-based alloys in two fuel assemblies for in-reactor performance evaluation purposes during cycles 4, 5, and 6.

The exemption is in accordance with the licensee's application for Technical Specification amendment dated December 20, 1991.

The Need for the Proposed Action

The licensee's basis for the exemption is presented below:

The Code of Federal Regulations, 10 CFR 50.46 and 10 CFR 50, appendix K contain requirements for emergency core cooling systems (ECCS) at light-water nuclear power plants fueled with uranium oxide pellets within cylindrical zircaloy cladding. Requirements for control of hydrogen gas at light-water reactors fueled with oxide pellets within cylindrical zircaloy are contained in 10 CFR 50.44. The regulations do not define what is considered zircaloy. Therefore, it is not clear whether the deviations from the composition specifications of Zircaloy-4 of some of the fuel rods in the proposed demonstration program are within the regulatory basis of the zircaloy specified in 50.46, appendix K, and 50.44. Arizona Public Service Company requests that an exemption be granted to 10 CFR 50.46, 10 CFR 50, appendix K, and 10 CFR 50.44 to permit the use of fuel rods clad with zirconium-based alloys whose compositions are outside the range of Zircaloy-4.

The underlying purpose of 10 CFR 50.46 and 10 CFR part 50 appendix K is to establish requirements for calculations of emergency core cooling systems. The safety analysis for the Technical Specification change to allow the use of the advanced alloy cladding in the PVNGS Unit 3 demonstration assemblies identifies that the behavior of the alloys is expected to be essentially the same as that of conventional Zircaloy-4 under all conditions experienced during both normal operation and under the conditions existing during the loss-of-coolant accident (LOCA) transient. Therefore, the 10 CFR 50.46 and 10 CFR 50, appendix K criteria will be satisfied for the advanced alloys.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The safety analysis for the Technical Specification change to allow the use of the advanced alloys in the PVNGS Unit 3 demonstration assemblies identifies that the B phase oxidation rate of the advanced alloys will be comparable to or lower than that of Zircaloy-4. Therefore, the use of the advanced alloys will have no significant effect on previous assessments of hydrogen gas production.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of this proposed exemption, and concludes that unfavorable operational or safety considerations will not be introduced by this action, and no perceptible impact on the environment will result. The advanced cladding alloys are expected to perform as well

as the Zircaloy-4 cladding. The fuel assemblies meet the same design bases as fuel currently in the reactor. No safety limits have been changed or set points altered to permit the use of these new assemblies. In addition, the FSAR analyses are bounding for the new assemblies. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves the use of fuel rods with advanced zirconium-based alloys. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption and associated amendment. This would not reduce environmental impacts of plant operation and would deny the licensee the opportunity to test cladding with improved corrosion resistance properties.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Palo Verde Nuclear Generating Station, Unit No. 3 dated February 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 19, 1992 (57 FR 6034). No request for hearing or petition for leave to intervene was filed following this notice. For further details with respect to this action, see the licensee's application for amendment dated December 20, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 2nd day of June, 1992.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13522 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8903]

Homestake Mining Co., Milan Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend source material license SUA-1471 for the Milan Mill to approve a plan for reclamation of the facility.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1471, Homestake Mining Company's Milan Mill, to add a new license condition approving a reclamation plan and to revise an existing license condition.

DATES: The comment period expires July 9, 1992.

ADDRESSES: Copies of the license amendment request and the staff evaluation which is the basis for revision of the license are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC complete review and approval of detailed reclamation (i.e., final closure) plans, for nonoperational tailing impoundments as soon as practicable, but in any event not later than September of 1993.

The NRC in a letter dated May 22, 1986, informed the licensee that a reclamation plan and surety arrangement adequate to meet the requirements of 10 CFR 40, appendix A, was required. The licensee provided a conceptual reclamation plan on December 1, 1986. This reclamation plan was revised and supplemented several times, and on January 31, 1991, the final reclamation plan was submitted.

The NRC has reviewed the proposed final reclamation plan and other supporting information, against current design guidance, and has determined that the plan meets the requirements of 10 CFR 40, appendix A. In addition to the commitments in the reclamation plan, the licensee will be required to provide additional information on any design changes to the radon barrier necessitated by the results of ongoing physical testing, additional information on settlement of the top of the large pile, quality assurance and controls to be utilized during construction, and details of the designs of the toe aprons and toe drainage systems on both piles.

Dated at Denver, Colorado, this 1st day of June 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-13524 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8907]

United Nuclear Corp., Church Rock Mill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent to Amend Source Material License SUA-1475 for

the Church Rock Mill to Incorporate Reclamation Schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1475, United Nuclear Corporation's Church Rock Mill, to incorporate a revised reclamation schedule and to add a new license condition.

DATE: The comment period expires July 24, 1992.

ADDRESSES: Copies of the response from United Nuclear Corporation and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, Colorado, and the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 80226.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO 80225. Telephone: 303-231-5800.

The U.S. Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also specified dates for completion of placement of a final earthen cover for each site.

The NRC requested by a letter dated October 22, 1991, that the licensee submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 28, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1997, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation milestone schedule and concluded that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-1475 to incorporate the schedules proposed by the licensee by adding License Condition No. 35 to read as follows:

35. The licensee shall complete site reclamation in accordance with the approved reclamation plan and ground-water corrective action plan, as authorized by License Condition Nos. 34 and 30, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile-complete.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—complete.

(3) Placement of final radon barrier designed and constructed to limit radon emission to an average flux of no more than 20 $pCi/m^2/s$ above background—December 31, 1997.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—December 31, 1997.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 1995.

C. Any license amendment request to revise the completion dates specified in section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado, this 29th day of May 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-13525 Filed 6-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-2900092; License No. 47-24832-01; EA 91-116]

Order Imposing Civil Monetary Penalty; Dag Hammarskjold Cancer Treatment Center, Beckley, WV

I

Dag Hammarskjold Cancer Treatment Center (Licensee) is the holder of a Medical Private Practice License No. 47-24832-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on August 28, 1986. The license authorizes the Licensee to practice nuclear medicine in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on August 14-15, 1991. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 23, 1991. The Notice stated the nature of the violations, the NRC requirements violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated November 26 and December 4, 1991. In its responses, the Licensee denied three violations, admitted seven violations, contended two violations were inaccurate and requested total mitigation of the civil penalty.

III

In consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations, with the exception of Violations F and G, occurred as stated and that the penalty proposed for the violations identified in the Notice should be imposed. No monetary penalty was assessed for Violation A due to the reasons described in the Appendix. With respect to Violations F and G, Violation G is withdrawn and Violation

F is amended as described in the Appendix to this Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $1,040 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission requirements as set forth in Violations A, F, as amended, H, and I of the Notice, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 2d day of June 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On October 23, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Dag Hammarskjold Cancer Treatment Center responded to the Notice on November 26 and December 4, 1991. In its responses, the licensee denied three violations (A, F, and G), admitted seven violations (B, C, D, E, J, K, and L) and contended two violations (H and I) were inaccurate. In addition, the licensee requested mitigation of the civil penalty and that the violations be treated as minor. The NRC's evaluation and conclusion regarding the licensee's denial and contention of inaccurate Violations and request for mitigation of the civil penalty are as follows:

Restatement of Violation A

10 CFR 35.13(b) requires that a licensee apply for and must receive a license amendment before it permits anyone, except a visiting authorized user described in 10 CFR 35.27, to work as an authorized user under the license.

Contrary to the above, from September 1987 to August 15, 1991, the licensee permitted a physician to work as an authorized user under License No. 47–24832–01; however, that individual was not a visiting authorized user as described in 10 CFR 35.27, and the licensee had not received a license amendment naming that individual as an authorized user.

Summary of Licensee's Response to Violation A

The licensee denied this violation and states that it is untrue that the Director, the physician referenced in the violation, was permitted to work as an authorized user of radiopharmaceuticals for human uses (including diagnostic purposes). The licensee stated that, at worst, there may have been unintentional confusion, but no intentional violation. The licensee supported its statements by the following:

1. The Director understood he was not an authorized user when the license was applied for in 1986; that is why he had listed Radiologists on the license as authorized users. Because of the distance from the office of the identified authorized users to the Director's clinic, arrangements were made for the Director to work under the listed Radiologists' supervision. The licensee asserts that there would have been no need to include the other physicians on the license if it had been the Director's intention or interpretation to serve as an authorized user.

2. The Director believed that the Radiologists' interpretation of each study performed and the followup of any suggestions they made on these studies satisfied the requirement of "used under supervision." The patients were seen and followed up by the Director in the clinic, and each study was analyzed and reported by the Radiologists.

3. In the 1987 NRC inspection, the arrangement described in Item 2 above was found to be satisfactory and no violations were found. Therefore, the Director had no reason to believe continuation of the arrangement with the Radiologists constituted any form of violation.

The licensee indicated that as soon as a different interpretation was made after the August 1991 NRC inspection, corrective actions were taken. The licensee also requested the violation be treated as minor.

NRC Evaluation of Licensee's Response

The licensee acknowledges that the Director was using radiopharmaceuticals under the NRC license during the period cited in the violation for diagnostic nuclear medicine procedures on humans. The licensee agrees that the Director was not listed on the NRC license as an authorized user. The licensee argues, however, that the Director was acting under the supervision of authorized users (the Radiologists), as permitted by the NRC. The NRC disagrees. The Director did not operate under the supervision of any of the physicians listed on the license as authorized users between September 1987 and August 15, 1991. Section 35.25 of 10 CFR 35 specifies particular actions which must be taken if the licensee permits an individual to use materials under the supervision of an authorized user. The August 1991 inspection included interviews of the two authorized users named on the license at the time of the inspection and concluded that authorized users had not performed any of the actions listed in § 35.25. One physician stated he had never visited the licensee's facility, nor had he consulted with the licensee or evaluated nuclear medicine scans for the licensee. The second physician stated that he read scans delivered to him by the licensee, but he had not visited the facility nor had he consulted with the licensee prior to the ordering and administration of radiopharmaceuticals to humans. In addition, information acquired during the inspection indicated that the original eight physicians named on the license as authorized users had not visited the facility and provided only nuclear medicine scan reading services for the licensee. By letter dated August 28, 1986, the NRC transmitted the license and designated specific individuals by

name to act as authorized users and perform certain human use medical procedures. Additionally, the letter stated that the NRC had not authorized the Director to "independently use licensed materials for medical purposes." The letter also documented a telephone conversation on August 12, 1986, between the license reviewer and the Director in which this restriction was explained to the Director. Notwithstanding these communications, the Director assumed all the responsibilities of an authorized physician-user specified by Regulatory Guide 10.8, Revision 1, referenced in the licensee's application for a license dated March 6, 1986, with the exception of interpreting the results of diagnostic procedures in which radiopharmaceuticals are used.

The Director indicated that he had no reason to believe his understanding and actions were in violation of Commission requirements, since a 1987 NRC inspection found no violations. The NRC inspection report does indicate no violations in this area and indicates that licensed material was being used by authorized individuals "as per application," although at the time of the inspection in 1987, none of the named authorized users were present at the facility, nor were they interviewed.

The Director may have believed he was working under the supervision of an authorized user and that his actions were in compliance with NRC regulations. However, the evidence clearly indicates that he was not being supervised by an authorized user, and in fact had assumed the responsibilities of an authorized user contrary to the regulation. The NRC does not agree that this violation is minor. Independent use of radiopharmaceuticals on humans by unauthorized or unsupervised physicians raises a regulatory concern which could manifest itself as a significant safety issue. The licensee initiated corrective actions after the 1991 inspection to clarify the supervisory role of its authorized users in relation to licensed activities.

The NRC concludes that the violation did occur as stated in the Notice. However, as a result of the questions concerning the 1987 inspection, the proposed civil penalty for this violation is withdrawn.

Restatement of Violation F

10 CFR 35.51(c) requires, in part, that a licensee check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, from September 1987 to August 15, 1991, the licensee routinely did not check its survey meter with a dedicated check source on days when the instrument was used. The licensee did not have a dedicated check source in its possession.

Summary of Licensee's Response to Violation F

The licensee denied that radiation survey instruments were not routinely checked with a dedicated check source on days when the instrument was used and denied that it did not possess a check source. The licensee stated that the two instruments in its possession both contained built-in cesium 137 check sources, and that the survey meters were checked with the built-in check source on each day of use. Additionally, the licensee stated that a cobalt 57 source was available. The licensee stated that the survey meters were tested with the check sources.

NRC Evaluation of Licensee's Response

With regard to the licensee's statement concerning the possession of check sources, the NRC acknowledges that the radiation survey instruments in the possession of the licensee contained built-in check sources. Additionally, the NRC accepts the licensee's contention that a cobalt 57 source was possessed by the licensee and available for checking survey instruments, though 10 CFR 35.51(c) specifies the use of a "dedicated" check source when checking survey meters. Therefore, the NRC has concluded that the citation in this regard was in error. Although the licensee's response indicates survey meters were checked with check sources each day of use, during the inspection, the technologist who performed radiological surveys for the licensee was not aware that the instrument contained built-in check sources, nor was the technologist aware that a cobalt-57 source was available for checking survey instruments. Additionally, the technologist stated that she did not check each instrument with any dedicated check source prior to performing radiation surveys.

Therefore, the NRC concludes that the licensee did fail to routinely check its survey meter on days when the instrument was used, and this aspect of the violation did occur as stated in the Notice. However, the violation is amended by deleting the sentence "The licensee did not have a dedicated check source in its possession." Deleting this sentence does not impact the civil penalty in that the violation was for failure to check the survey instruments, not for failure to possess a source to perform such checks.

Restatement of Violation G

10 CFR 35.70(d) requires, in part, that a licensee establish radiation dose trigger levels for daily and weekly surveys of areas where radiopharmaceuticals are routinely prepared for use or administered and areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

Contrary to the above, from September 1987 to August 15, 1991, the licensee did not establish radiation dose trigger levels for its daily surveys of the nuclear medicine imaging and hot lab rooms where radiopharmaceuticals were prepared, administered, stored, or held as waste.

Summary of Licensee's Response to Violation G

The licensee denied that radiation dose trigger levels for daily surveys of the nuclear medicine imaging and hot lab rooms had not been established, and provided representative copies of survey data sheets to demonstrate that the trigger levels were included in the survey record forms.

NRC Evaluation of Licensee's Response

During the inspection, the licensee's technologist indicated that the licensee had not established radiation dose rate trigger levels for daily surveys. However, the data sheets submitted with the response do indicate trigger levels. The NRC determines this to be a misunderstanding of what the NRC was requesting during the inspection. Based on the copies of survey data sheets with radiation dose rate trigger levels provided in the licensee's response to the Notice, the NRC is withdrawing this violation.

Restatement of Violation H

10 CFR 35.70(e) requires that a licensee survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

Contrary to the above, during the weeks of October 1987 to August 15, 1991, the licensee did not survey for removable contamination in the nuclear medicine imaging and hot lab rooms, areas where radiopharmaceuticals were routinely prepared, administered, and stored.

Summary of Licensee's Response to Violation H

The licensee stated that the violation is inaccurate in that some contamination surveys have been performed since October 1987. The licensee provided examples of weekly survey results

performed in 1988 which they state are contamination surveys because the records show background levels of less than 30 counts per minute (cpm). The licensee admits there were no contamination surveys performed during weeks when technetium-99m (Tc-99m) was used one time. The licensee contends that when radiopharmaceuticals containing Tc-99m are prepared and used in the nuclear medicine department, and if the frequency of use is once per week, a daily radiation survey for measuring exposure rates in preparation and use areas is adequate for detecting removable contamination. The licensee explains that the nuclear medicine department used radiopharmaceuticals containing Tc-99m at a frequency of only once a week during the majority of the time. The licensee states that under these conditions, the weekly removable contamination survey was not performed because it will not detect any removable contamination since Tc-99m only has a six hour half-life.

The licensee indicates that a program has been implemented to perform weekly surveys for removable contamination whether or not radiopharmaceuticals containing Tc-99m are used once a week or not at all.

NRC Evaluation of Licensee Response

Weekly surveys were not performed for removable contamination as described in 10 CFR 35.70. First, the licensee admits the surveys were not done during some weeks. Second, at the time of the inspection, the inspector noted that the technologist who performs the licensee's radiological surveys indicated that she had performed contamination surveys with a survey instrument and had recorded the results on the data sheets in units of cpm. After explaining to the technologist how a wipe survey for removable contamination should be conducted per the regulations, the technologist acknowledged that she had never performed a wipe survey for removable contamination in the manner described. Statements made by the technologist indicated that weekly radiation surveys for measuring ambient exposure rate, rather than weekly wipe surveys for detecting removable contamination, had been performed. The technologist was unaware of the difference between the two different types of surveys and the associated results.

The NRC concludes that the violation did occur as stated in the Notice.

Restatement of Violation I

10 CFR 35.70(g) requires, in part, that a licensee establish removable contamination trigger levels for weekly surveys of all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

Contrary to the above, from September 1987 to August 15, 1991, the licensee did not establish removable contamination trigger levels for surveys of the nuclear medicine imaging and hot labs rooms where radiopharmaceuticals were prepared, administered, and stored.

Summary of Licensee's Response to Violation I

The licensee stated the violation is inaccurate in that removable contamination trigger levels had been established for weekly surveys of the nuclear medicine imaging and hot lab rooms. The licensee indicated that the trigger levels were included on the bottom of each survey sheet as background for non high radiation areas and 5 mR/hr (which represents 1000 cpm) for high radiation areas.

NRC Evaluation of Licensee's Response

The NRC agrees that the licensee had established trigger levels for various areas of "less than 5 mR/hr" and "should not exceed background levels" on each survey sheet, but these were used as trigger levels for measuring ambient exposure rates and not for levels of removable contamination. Discussions with the licensee's technologist and Radiation Safety Officer (Director of clinic) and reviews of the licensee's response to Violation H concerning removable contamination surveys indicated that contamination surveys were neither properly performed, nor had trigger levels been established for removable contamination. Also, during the inspection, the technologist was not aware of established trigger levels for removable contamination.

The licensee contends that the trigger levels of 5 mR/hr could be equated to 1000 counts per minute for removable contamination. However, the NRC determined that the licensee's Radiation Safety Officer and technologist were incorrectly comparing direct radiation surveys for measuring ambient exposure rates to contamination trigger levels established for removable contamination surveys. As discussed in Violation H, the licensee failed to perform removable contamination surveys.

The NRC concludes that the violation did occur as stated in the Notice

Summary of Licensee's Request for Mitigation

The licensee stated that the violations should be classified as Severity Level V violations and not considered in the aggregate as Severity Level III. The licensee bases this request on (1) each violation is minor because no harm or "untoward effects" occurred, (2) first time violations have been cited, (3) there were inaccurate citations, (4) there was no willful disregard for the requirements, nor was there any economic advantage gained and (5) the director's desire to provide needed care to his patients and handle all pressures for a small clinic led to his being unaware of the presence of the violations. The licensee also requested that the civil penalty be mitigated based on the following: (1) Violations were corrected as soon as possible and preventive measures taken to prevent recurrences, (2) the director was unaware of the violations and thus, did not have the opportunity to identify them himself, (3) none of the violations caused any harmful effects, (4) the clinic is small with limited nuclear medicine studies, (5) none of the violations were willful, and (6) there had been no previous violations.

NRC Evaluation of Licensee's Request for Mitigation

The NRC expects the licensee, particularly the Radiation Safety Officer, to identify violations of NRC requirements promptly and to take effective corrective action to prevent recurrences. In this case, the licensee's system in place to promptly identify and correct violations broke down, and as a result some of these violations continued for more than three years. In the Enforcement Conference and in the responses to the Notice, the licensee admits this breakdown and contends it was due, in part, to the loss of staff whom the Director had delegated to oversee the program. Although the licensee took immediate corrective action once the problems were identified by the NRC, it failed to develop a definitive plan for re-establishing effective long-term oversight of the radiation safety program until prompted by the NRC. For example, the licensee did not pursue recalibrating instruments and setting up an oversight scheme until the NRC issued a Confirmatory Action Letter.

The licensee states the violations were minor because there were no harmful effects. This is fortuitous. For example, for more than three years the licensee did not check its instrument

used to measure patient doses for accuracy. The failure to test a dose calibrator for accuracy is a violation of more than minor safety significance. The failure to calibrate survey instruments and the failure of the Radiation Safety Officer (the Director in this case) to assure that radiation activities were being performed on a day-to-day basis in accordance with approved procedures are also of more than minor safety significance.

The nature and scope of the business conducted by "Academic or Medical Institutions" were considered in developing the base civil penalty in Table 1A, Category "h" of the NRC Enforcement Policy. In addition, the NRC took into account the size and scope of this licensee's program when assessing the civil penalty in this case. In view of the actions taken and upon review of the licensee's response to the Notice, the NRC has determined that the licensee has not demonstrated that its ability to safely conduct licensed activities would be adversely affected by this civil penalty. The NRC considered that none of the violations were willful and that they had not been previously cited in 1987 when determining the civil penalty in this case. For the violations that were not withdrawn or modified, the licensee's response to the Notice does not provide any information that was not already known at the time the NRC determined the civil penalty.

NRC Conclusion

The NRC concludes that, with the amendment of Violation F and the exception of Violation G, the violations occurred as stated. No monetary penalty was assessed Violation A. Since the civil penalty was assessed equally among 12 violations, the withdrawal of Violation G and the withdrawal of the monetary penalty associated with Violation A results in a reduction of the civil penalty by 1/6 or approximately $210. Consequently, a civil penalty in the amount of $1,040 is being imposed.

[FR Doc. 92-13523 Filed 6-8-92; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-315]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-58 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Unit No. 1 located in Berrien County, Michigan.

The proposed amendment would change TS Sections 4.4.5.2, 4.4.5.3, 4.4.5.4, 4.4.5.5, 3.4.6.2, and the Bases 3/4.4.5, 3/4 4.6.2 and 3/4 4.8 to allow the implementation of interim steam generator tube plugging criteria for the tube support plant evaluations. The amendment also reduces the allowed primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowed primary-to-secondary operational leakage through all steam generators is reduced from one gallon per minute (1440 gallons per day) to .42 gallons per minute (600 gallons per day). This proposed amendment is only applicable for fuel cycle 13.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are: Feedwater system malfunction, loss of external electrical load and/or turbine trip, loss of all AC power to station auxiliaries, major secondary system pipe failure, steam generator tube rupture, reactor coolant pump locked rotor, and rupture of a control rod drive mechanism housing. Of these, the major secondary system pipe failure is the most limiting for Cook Nuclear Plant Unit 1 in considering the potential for off-site doses. Upon implementation of the interim plugging criteria, it will be verified that the distribution of cracking indications at the tube support plate intersections is such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR part 100 guideline, i.e., 30 rem thyroid, during a postulated Steam Line Break (SLB) event. Data indicates that a threshold voltage of 2.8 volts would result in through-wall cracks with the potential to leak at SLB conditions. Application of the proposed plugging criteria requires that the current distribution of number of crack indications versus voltage be obtained. The indicated bobbin coil voltage is then combined with the rate of change in voltage measurement to establish an end-of-cycle (EOC) voltage distribution and, thus, leak rate during SLB pressure differential. If it is found that the projected SLB leakage for degraded intersections planned to be left in service exceeds 120 gpm, then additional tubes will be plugged to reduce projected SLB leakage below 120 gpm. Results from analyses, based on the Cook Nuclear Plant Unit 1 growth rate and assumed eddy current uncertainties, indicate that over 4000 indications, all with a bobbin coil (BOC) voltage of 2.0 volts, would contribute less than 1 gpm leakage at SLB conditions. Based on the inspection results from the last outage (1990), indications left in service are expected to have a total predicted SLB leak rate of 0.1 gpm at EOC conditions. Therefore, it has been shown that an interim plugging criteria of 1.0 volt will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From any Previously Analyzed

Implementation of the proposed amendment does not introduce any changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the tube support plant elevations. Neither a single nor multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions). The bobbin coil signal amplitude interim plugging criteria of 1.0 volt is established such that neither operational leakage nor excessive leakage during a postulated SLB condition are anticipated.

Indiana Michigan Power Company will implement a maximum leakage rate

limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions upon application of the interim plugging criteria. The current technical specification limit on primary-to-secondary leakage at operating conditions is a maximum of 1.0 gpm (1440 gpd) for all steam generators or a maximum of 500 gpd for any one steam generator. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. Therefore use of the interim plugging criteria of 1.0 volt will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a Significant Reduction in a Margin of Safety

The use of the interim plugging criteria for the tube support plate at Cook Nuclear Plant Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the requirements of Regulatory Guide (RG) 1.121. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection. Tubes with unacceptable cracking will be removed from service. The most limiting effect would be a possible increase in leakage during a steam line break event. Once the interim plugging criteria is applied, excessive leakage during a steam line break event is precluded by verifying that the expected end-of-cycle distribution of crack indications at the tube support plate elevations would result in minimal and acceptable primary-to-secondary leakage during all plant conditions. This helps to demonstrate that radiological conditions are less than a small fraction of the 10 CFR part 100 guideline.

Implementation of the interim plugging criteria is supplemented by 100% inspection requirements at the tube support plate elevations having outer diameter stress corrosion cracking indications (ODSCC), reduced operating leak rate limits, and eddy current inspection guidelines to provide consistency in voltage normalization. Implementation of the interim plugging criteria will decrease the number of tubes which must be repaired or taken out of service by plugging. The installation of steam generator tube plugs reduces the reactor coolant system (RCS) flow margin and, thus, implementation of the interim plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Therefore, it is concluded that the proposed change does not result in a significant reduction in a margin of safety with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 9, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to

matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ledyard B. Marsh: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 27, 1992, and supplements dated April 21 and May 21, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 3d day of June 1992.

For The Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13526 Filed 6–8–92; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Amendments to the Columbia River Basin Fish and Wildlife Program

May 29, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (measures for anadromous fish, phase 3).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has proposed amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments propose major changes to the salmon and steelhead provisions of the program. Copies of the proposed amendments are now available, and comments are solicited.

BACKGROUND: The Council is in the third phase of a four-part process to amend the Columbia River Basin Fish and Wildlife Program (program). In phases one and two, the Council adopted amendments regarding priority habitat and production amendments and major mainstem and harvest measures. The Council is now initiating phase three, by proposing a series of further amendments to the program, to be circulated for public comment. Proposed phase three amendments address program goals and objectives, system planning, monitoring and evaluation, and major salmon and steelhead habitat and production issues. Phase four, to address resident fish and wildlife, is expected to begin in September, 1992.

OPPORTUNITY FOR COMMENT: The Council will receive written comment on the proposed amendments (including any provisions adopted previously in phases one or two) through 5 p.m. Pacific time, July 9, 1992. Comments should be clearly marked "Salmon Amendment Comments," and submitted to the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204. After the close of comment, the Council may initiate further consultations. July 30 and 31 have been identified as tentative dates for such consultations. A final decision whether to hold such consultations has not been made. Please call the Council's central office at 1–800–222–3355 and leave your name and telephone number if you wish to receive notice of such consultations.

HEARINGS: Hearings will be held on the proposed amendments, or on recommendations submitted on August 9, as follows:

June 2—Red Lion Hotel, Pasco, WA, 1 p.m. and 5:30 p.m.

June 3—Angus Inn, Eugene, OR, 7 p.m. to 10 p.m.

June 3—Sheraton Hotel, Aronson Room, Great Falls, MT, 3 p.m. to 7 p.m.
June 4—Holiday Inn, Ballroom B, Missoula, MT, 3 p.m. to 7 p.m.
June 8—Hoke Memorial Center, Eastern Oregon State College, Rooms 309–310, LaGrande, OR, 7 p.m. to 10 p.m.
June 10–11—Templin's Resort Hotel, Post Falls, ID, 10 a.m.
June 16—Community Center, Salmon, ID, 7 to 10 p.m.
June 16—Clatsop Community College, Performing Arts Center, Astoria, OR, 7 p.m. to 10 p.m.
June 24—Central office, Portland, OR, time to be announced.
June 29—Holiday Inn, Sea-Tac, Seattle, WA, 1 p.m. and 5:30 p.m.
June 30—Owyhee Plaza, Boise, ID, 3 p.m. to 5 p.m. and 7 p.m. to 9 p.m.
July 8–9—Outlaw Inn, Kalispell, MT, time to be announced.

Please contact the Council's Public Affairs Division to reserve a time to testify. Witnesses should be prepared to summarize briefly, rather than read, any written statement they wish to enter into the record.

FOR FURTHER INFORMATION: For copies of the proposed amendments (request document no. 92–16), contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 92–13435 Filed 6–8–92; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30769; File No. SR–MCC–92–3]

Self-Regulatory Organization; Midwest Clearing Corp.; Filing and Order Approving on an Accelerated Basis a Proposed Rule Change To Allow Participants To Access Fund/SERV Through DTC

June 2, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] notice is hereby given that on April 30, 1992, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice and order to solicit comments from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow MCC members to participate in the National Securities Clearing Corporation's ("NSCC") Mutual Fund/Settlement, Entry, Registration, and Verification System ("Fund/SERV") through The Depository Trust Company's ("DTC") Participant Terminal System ("PTS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 31, 1989, the Commission permanently approved a proposed rule change by MCC to establish facilities for MCC participants' use of Fund/SERV.[2] Generally under Fund/SERV, MCC participants exchange data with NSCC, MCC's Fund/SERV facilities manager, either directly or through the use of service bureaus. Most, if not all, MCC participants utilize service bureaus. Currently, MCC participants transmit Fund/SERV data to NSCC, and NSCC retransmits the data to the appropriate mutual fund. MCC participants, however, settle Fund/SERV transactions at MCC.

The purpose of the proposed rule change is to allow MCC participants greater flexibility in exchanging Fund/SERV data with NSCC by enabling them to transmit such data to DTC through PTS. DTC will then retransmit the data directly to NSCC through existing communications facilities between NSCC and DTC.[3] Use of PTS will be limited to Fund/SERV transactions.

This alternative communication link between MCC participants and NSCC will allow MCC participants to avoid entering into costly and time-consuming interfacing arrangements with independent service bureaus.[4] By facilitating participant communication through preexisting linkages between DTC and NSCC, the proposed rule change also encourages the further use of data processing arrangements and linkages among clearing agencies and settlement facilities.

The proposed link through DTC will not change MCC's Fund/SERV rules except that MCC participants using the linkage will be required to sign a Fund/SERV Interface Participant's Agreement and MCC will sign DTC's standard Fund/SERV Interface Participant's Agreement. Participants in the enhanced service will agree to abide by both DTC's and NSCC's procedures as they relate to the Fund/SERV Interface. MCC participants will continue to settle Fund/SERV transactions at MCC. MCC will, in effect, sponsor its participants into the Fund/SERV link at DTC.

The proposed rule change is consistent with Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of mutual fund transactions. By encouraging the use of more efficient means of communications among Fund/SERV participants, the link with DTC will likely result in more effective and efficient clearance and settlement of mutual fund transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MCC has neither solicited nor received comments on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988)

[2] Securities Exchange Act Release No. 26506 (January 31, 1989), 54 FR 6051; *see also* Securities Exchange Act Release No. 26216 (October 25, 1988), 53 FR 43954 (temporary approval order).

[3] Securities Exchange Act Release No. 27056 (July 24, 1989), 54 FR 31752 (order approving establishment of Fund/SERV interface between DTC and NSCC).

[4] In addition to providing communication links between MCC participants and Fund/SERV, service bureaus also provide various back-office services. Because many service bureaus lack the necessary front-end communications linkages needed to interface with NSCC, the development of such linkages typically involves considerable expenditures of both time and money. Telephone conversation between David Kiwalko, Product Development Manager, MCC, and Richard C. Strasser, Attorney, Division of Market Regulation, Commission (May 6, 1992).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposal is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(F) of the Act. That section requires, among other things, that the rules of a clearing agency be designed to "remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions * * *" [5] Permitting MCC participants to access Fund/SERV directly through DTC rather than through service bureaus improves the existing Fund/SERV linkage between MCC and NSCC by providing participants a quick and efficient alternative way to access a service that promotes the prompt and accurate clearance and settlement of mutual fund transactions. The proposal is, therefore, consistent with the Commission's ongoing mandate to remove impediments to and perfect the mechanism for a national clearance and settlement system.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving because it believes that to delay approval would unnecessarily hinder MCC's efforts to provide a valuable, time-saving, and cost-effective service to its participants. Currently, as discussed above, it is generally a time-consuming and expensive process for participants to establish, either directly or through independent service bureaus, the necessary front-end linkages necessary to allow MCC participants to access Fund/SERV. Under the proposed rule change, participants, through DTC's PTS, will be able to access Fund/SERV quickly and efficiently. Such cost and time savings justify approval of MCC's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR-MCC-92-3 and should be submitted by June 30, 1992.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR-MCC-92-3) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13459 Filed 6-8-92; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30-3(a)(12) (1991).

SUSQUEHANNA RIVER BASIN COMMISSION

Increase in Interim Consumptive Use Fee

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of adoption of increase in interim consumptive use fee.

DATES: This action shall be effective on January 1, 1993.

SUMMARY: Notice is hereby given that the Susquehanna River Basin Commission has adopted an increase in its interim consumptive use fee.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary to the Commission, 717/238-0423.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Susquehanna River Basin Commission adopted an increase in its interim consumptive use fee from $.06 per 1,000 gallons consumed to $.14 per 1,000 gallons consumed at its meeting on May 14, 1992.

The Commission has been charging this interim fee for certain permitted consumptive use projects which have not yet arranged to provide consumptive use makeup water or limit consumption to 20,000 gpd during periods of low flow as required under Regulation 18 CFR 803.61. The Commission reserved the right to increase this fee in the docket decisions approving these projects.

This action was first proposed in notices appearing in the **Federal Register** on April 1, 1992 at p. 11132, the New York Register on April 15, 1992 at p. 91, the Pennsylvania Bulletin on April 4, 1992 at p. 1632 and the Maryland Register on April 17, 1992 at p. 840. Public hearings were held on April 30, 1992 at Harrisburg, PA and on May 14, 1992 at Elmira NY. A number of written and oral comments were received which are summarized below along with responses thereto.

Comment: Commission calculation of the increase is incorrect for a number of reasons including: (1) They are based on costs for eight projects which are only proposed at this time; (2) Annualized cost estimates are too high; (3) The project costs have not yet actually been incurred and the Commission's estimates are therefore speculative. The increases should not be made effective until actual costs of storage are incurred.

Response: Staff analysis used to calculate the proposed increase was based on one existing project—the Cowanesque Water Storage Project; the proposed Curwensville Water Storage Project, a project for which staff possessed good, though not final, cost estimates; and six other projects for which the Commission possesses reasonably current and accurate data. Staff recommendations were based on the costs at Cowanesque and Curwensville, with the other six projects providing supporting evidence.

Staff annualized all costs (including ancillary costs like O&M and contract negotiations) to make them fully comparable with the Cowanesque and Curwensville analyses. The Cowanesque and Curwensville data indicate that such ancillary costs represent about 12% of the annual capital costs. Thus, this 12% figure has nothing to do with estimates of consumer price increases as suggested by one commentator.

The Commission rejects the idea that the careful economic analysis performed by staff is speculative. As for waiting until costs are actually incurred, certain costs, such as the Commission's non-federal share of the Curwensville Feasibility Study, have already been incurred. All monies collected by the Commission are being placed into a special fund to be used only for storage projects such as Curwensville or other

projects or programs designed to mitigate low flows.

Comment: Because of long-term contractual obligations, private, non-utility entities cannot pass on the increase in the interim consumptive use fee to ratepayers. The increase itself, from $.06 to $.14 per one thousand gallons consumed is unreasonable and burdensome to such entities, is an economic disincentive, and should be phased in more gradually.

Response: All permittees currently paying the interim consumptive use fee were given notice at the time of their docket approvals that the fee was subject to increase by the Commission. They were further informed that the fee was only being accepted by the Commission as an interim measure and that they were expected to make good faith efforts to locate a source of makeup water. Many other similarly situated private entities subject to the same economic forces have already made arrangements to provide makeup water during low flow events.

Rather than move vigorously to locate makeup water sources, however, some permittees have been content to continue paying the fee. To the extent that the increase fee will cause these permittees to renew their interest in locating a source of makeup water, it will have accomplished one of its objectives.

The Commission is not making the increase effective until January 1, 1993. This should provide sufficient time for permittees to adjust their budgets accordingly.

Comment: The Commission should give a credit to payers for such things as improved water quality discharges or removal of coal waste.

Response: The primary purpose of the Commission's consumptive use regulation is to mitigate the adverse effects associated with man's consumption of water during periods of low flow. Thus, it is a quantitatively rather than a qualitatively oriented regulation. Improved water quality or reduction in coal wastes do not, per se, add water to the river system during periods of low flow. Thus, an automatic credit for serendipitous impacts may not be appropriate, though the Commission may be willing to consider the merits of such credits on a case-by-case basis.

Resolution Adopting Increase in Interim Consumptive Use Fee

A resolution of the Susquehanna River Basin Commission providing for an increase in the SRBC interim consumptive use fee.

Whereas, under the Commission's Consumptive Use Regulation (18 CFR 803.61(c) (2) & (3)), alternatives to compensation may be allowed by the Commission, including "a monetary payment to the Commission in an amount to be determined by the Commission from time-to-time;" and

Whereas, the Commission, by docket decision, has allowed a number of consumptive use permittees to make monetary payments to the Commission at the rate of $.06 per 1,000 gallons of water consumed on an interim basis pending the location of a viable source of compensation; and

Whereas, in the said docket decisions, the Commission reserved the right to adjust this rate in the future; and

Whereas, Commission staff has completed an analysis of a revised fee schedule and its expected economic impacts; and

Whereas, the Commission, based on the findings of the staff analysis, believes that the current rate of $.06 per 1,000 gallons does not equitably reflect the true cost of providing compensation and therefore does not provide sufficient economic incentive for permitees to seek out sources of compensation as preferred by the Commission; and

Whereas, the Commission has held two public hearings affording an opportunity to the regulated community and the general public to comment on this matter.

Now therefore be it resolved that:

1. Pursuant to Commission Regulation 18 CFR 803.61(c)(2)&(3), and in accordance with the findings of the staff analysis, the interim consumptive use fee is hereby increased to the rate of $.14 per 1,000 gallons of water consumed for the above described projects and for all such prospective projects wherein an interim consumptive use fee is approved by the Commission.

2. This action shall be effective on January 1, 1993.

Authority: Susquehanna River Basin Compact, 84 Stat. 1509 et seq.

Dated: June 1, 1992.

Paul O. Swartz,

Executive Director.

[FR Doc. 92-13407 Filed 6-8-92; 8:45 am]

BILLING CODE 7040-01-M

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 1635]

Announcement of FY 1992 Russian, Eurasian and East European Studies Grant Recipients

On May 18, 1992, the U.S. Department of State approved the November 8, 1991, recommendations of the Russian, Eurasian and East European Studies Advisory Committee for awards in the competition which ended September 20, 1991.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $418,295.

Purpose: To provide fellowships for advanced in-country language training and combined on-site research and language training in Russian, Czech/Slovak, Hungarian, Polish, and Serbian/Croatian.

Contact: Dan E. Davidson, Director, USSR Program Group, ACTR/ACCELS, Fifth Floor, 1619 Massachusetts Avenue NW., Washington, DC 20036 (202) 328-2287.

2. Council on International Educational Exchange

Grant: $233,000.

Purpose: To support 8 academic year and 9 semester fellowships for intensive in-country language training; 8 graduate research fellowships; and 20 fellowships for "Social Sciences Program for Advanced Students of Russian" at St. Petersburg University.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661-1414.

3. Hoover Institution on War, Revolution and Peace at Stanford University

Grant: $200,000.

Purpose: To support postdoctoral fellowships (6-12 months duration) and summer grants for individual research projects on the Commonwealth of Independent States, Georgia, the Baltic countries, and Eastern Europe at Hoover.

Contact: Richard F. Staar, Coordinator, International Studies Program, Hoover Institution, Stanford, CA 94305 (415) 723-1348.

4. University of Illinois at Urbana-Champaign

Grant: $189,000.

Purpose: To provide partial funding for the University's Summer Research laboratory on Russia and Eastern Europe, and the Slavic Reference Service.

Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL 61801 (217) 333-1244.

5. Institute on International Education

Grant: $92,570.
Purpose: To support Professional Development Fellowships for advanced graduate students and junior faculty in professional fields for research on policy analysis of East Central Europe, including the Baltic countries.
Contact: Mary E. Kirk, Program Manager, East Central Europe, Institute on International Education, 809 United Nations Plaza, New York, NY 10017–3580 (212) 883–8200, Fax (212) 984–5452.

6. International Research and Exchanges Board

Grant: $2,205,313.
Purpose: To support a variety of programs facilitating American scholarly access to the Commonwealth of Independent States, Georgia, the Baltic countries, and Eastern Europe: grants for independent short-term research; collaborative projects and senior scholar travel grants; special projects in Social Sciences & Humanities; specialized on-site language training grants; developmental fellowships; predeparture orientation for Americans; long-term individual research fellowships for American graduate students; research residencies in the former Soviet republics; and dissemination of field results.
Contact: Linda Sitea, IREX, 126 Alexander Street, Princeton, NJ 08540–7102 (609) 683–9500.

7. Joint Committee on Eastern Europe

Grant: $950,000.
Purpose: To support fellowships for advanced graduate training, dissertation completion, pre- and post-doctoral research; language training (elementary domestic and advanced on-site); research conferences; the Junior Scholars' Training Seminar; and a Teaching and Curriculum workshop.
Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017 (212) 697–1505.

8. Joint Committee on Soviet Studies

Grant: $2,029,000.
Purpose: To support a national fellowship program for graduate training, dissertation completion, and postdoctoral research; a program for annual workshops in underrepresented fields; institutional language training awards for languages of the former Soviet Union; Research & Development program; and a national program for Slavic libraries, including support for the American Bibliography for Soviet and East European Studies (ABSEES).
Contact: Robert Huber, Staff Associate, JCSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280.

9. National Academy of Sciences

Grant: $240,000.
Purpose: To support training for young researchers in Energy Development and Environmental Protection with colleagues from Czechoslovakia, Ukraine and Byelarus.
Contact: Glenn Schweitzer, Director, Office of Soviet and East European Affairs, National Academy of Sciences, 2101 Constitution Avenue NW., HA-166, Washington, DC 20418 (202) 334–2644, Fax (202) 334–2614.

10. National Council for Soviet and East European Research

Grant: $2,459,185.
Purpose: To conduct a national competition among American institutions of higher education and non-profit corporations in support of postdoctoral research projects on the former Soviet Union and Eastern Europe.
Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue, NW., suite 304, Washington, DC 20036 (202) 387–0168.

11. The Woodrow Wilson Center for International Scholars

Grant: $1,126,637 ($715, 865 to Kennan; $410,772 to EES).
Purpose: To support the fellowships, meetings, and publications programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including an annual Junior Scholars' Training Seminar, co-sponsored with the JCEE.
Contact: Blair Ruble, Secretary, Kennan Institute, or John Lampe, East and West European Program. The Wilson Center, 370 E'Enfant Promenade, suite 704, Washington, DC 20024–2518 (202) 287–3000.

Dated: May 28, 1992.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 92–13289 Filed 6–8–92; 8:45 am]
BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Roanoke Regional Airport, Roanoke, VA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Roanoke Regional Airport Commission for the Roanoke Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of FAA's determination on the noise exposure maps is June 1, 1992.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, FAA—Eastern Regional Office, Airports Division, AEA–610, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–0902.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Roanoke Regional Airport are in compliance with applicable requirements of part 150, effective June 1, 1992.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Roanoke Regional Airport Authority. The specific maps under consideration are the noise exposure maps: Figure 14.2, 1991 Ldn Contours and Figure 14.3, 1996 Ldn Contours, appearing in the May 1992 revised submission of Volume 1 Noise Exposure Map Report.

The FAA has determined that these maps for Roanoke Regional Airport are in compliance with applicable

requirements. This determination is effective on June 1, 1992. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Eastern Regional Office, FAA—Fitzgerald Federal Building, Airports Division, rm. 337, JFK International Airport, Jamaica, NY 11430.

Washington Airports District Office, FAA—101 W. Broad St., suite 300, Falls Church, VA 22046.

Roanoke Regional Airport Authority, Roanoke Regional Airport, 5202 Aviation Drive, NW., Roanoke, VA 24012.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, NY on June 1, 1992.

Peter A. Nelson,

Assistant Manager, Airports Division, Eastern Region.

[FR Doc. 92-13505 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

NHTSA Technical Industry Meeting (6/24/92); Amendment To Include Communication for Individuals With Disabilities

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Amendment of previous Notice.

The National Highway Traffic Safety Administration (NHTSA) is amending the Notice concerning the NHTSA Technical Industry Meeting published on Tuesday, May 26, 1992, page 22017 of the **Federal Register** to include the requirement of accessibility for the disabled individual.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366-1810, by COB June 15, 1992.

SUPPLEMENTARY INFORMATION: The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The Ramada Inn includes facilities that are accessible to disabled individuals.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Carnes, Office of Rulemaking, NHTSA, 400 7th Street, SW., Washington, DC 20590. Ms. Carnes telephone number is (202) 366-1810.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13432 Filed 6-8-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-34; OTS No. 0864]

Merit Savings Association, Cincinnati, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Merit Savings Association, Cincinnati, Ohio, for permission to convert to the stock form of organization, in connection with a holding company merger conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13454 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-36; OTS No. 4901]

Peoples Federal Savings & Loan Association of Bellevue, Bellevue, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Peoples Federal Savings and Loan Association of Bellevue, Kentucky, for permission to convert to the stock form of organization, in connection with a holding company for inspection of the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of the Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13457 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-35; OTS No. 0718]

Suburban Federal Savings & Loan Association of Covington, Covington, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Suburban Federal Savings and Loan Association of Covington, Covington, Kentucky, for permission to convert to the stock form of organization, in connection with a

holding company merger conversion. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13456 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-33: OTS No. 0317]

Thrift Savings Loan Company, Cincinnati, OH; Final Action; Approval of Conversion Application

Notice of hereby given that on May 28, 1992, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Thrift Savings and Loan Company, Cincinnati, Ohio, for permission to convert to the stock form of organization, in connection with a holding company merger conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and at the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois, 60601.

Dated: June 3, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-13455 Filed 6-8-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 11, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED Choking Hazards (Small Human Figures).

The Commission will consider options to address the risk of choking injuries and deaths from small human figures and other toys of similar dimensions with rounded ends.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 4, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–13613 Filed 6–5–92;12:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, June 10, 1992.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Infant Cushions: Final Rule.

The Commission will consider a final rule addressing the risk of injury and death presented by infant cushions.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 504–0800.

Dated: June 4, 1992.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 92–13614 Filed 6–5–92; 12:41 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: June 10, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 960th Meeting—June 10, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7225–006, Little Salmon River Estates, Inc.
Project Nos. 7378–008, 7380–009 and 7383–009, Renewable Resources Development and Carlson Hydroelectric Corporation
Project No. 7899–009, Renewable Resources Development and Jungert Corporation, Inc.

CAH–2.
Project No. 3206–028, City of New Martinsville, West Virginia

CAH–3.
Project No. 6901–015, City of New Martinsville, West Virginia

CAH–4.
Project No. 2570–020, Ohio Power Company

CAH–5.
Project No. 2205–011, Central Vermont Public Service Corporation

CAH–6.
Omitted

CAH–7.
Project No. 7728–015, Robley Point Hydro Partners Limited Partnership

CAH–8.
Project No. 7270–008, Northern Wasco County People's Utility District

CAH–9.
Omitted

CAH–10.
Project No. 10727–001, Robert W. Shaw

CAH–11.
Omitted

CAH–12.
Project No. 6433–003, Warren B. Nelson
Project No. 6434–006, Thomas A. Nelson
Project No. 6435–001, Joseph B. Nelson

Consent Electric Agenda

CAH–1.
Project No. ER92–461–000, People's Electric Cooperative

CAE–2.
Docket Nos. ER92–317–000 and ER92–456–000, Public Service Company of Colorado

CAE–3.
Docket Nos. ER91–620–000 and EL92–31–000, Central Maine Power Company

CAE–4.
Docket No. EF92–5171–001, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

CAE–5.
Docket Nos. ER92–323–001 and ER92–324–001, Appalachian Power Company

CAE–6.
Docket Nos. ER91–494–002 and ER91–471–002, PacifiCorp Electric Operations

CAE–7.
Omitted.

CAE–8.
Docket Nos. ER92–143–001 and EL92–21–001, Florida Power and Light Company

CAE–9.
Docket No. ER91–505–003, Pacific Gas & Electric Company
Docket No. EL92–2–001, City of Vernon, California v. Pacific Gas and Electric Company
Docket No. EL91–8–002, Transmission Agency of Northern California V. Pacific Gas and Electric Company
Docket No. EL92–18–001, Pacific Gas and Electric Company

CAE–10.
Docket No. ER91–616–000, The Empire District Electric Company

CAE–11.
Docket No. RM92–3–001, Annual Update of Commission Filing Fees

CAE–12.
Docket No. ER91–562–000, Virginia Electric and Power Company

Consent Oil and Gas Agenda

CAG–1.
Omitted

CAG–2.
Docket No. TM92–6–25–000, Mississippi River Transmission Corporation

CAG–3.
Docket No. RP92–161–000, Penn-York Energy Corporation

CAG–4.
Omitted

CAG–5.
Omitted

CAG–6.
Docket No. RP92–48–003, Viking Gas Transmission Company

CAG–7.
Docket Nos. RP90–104–106, RP88–115–027, RP92–131–002 and CP91–676–002, Texas Gas Transmission Corporation
CAG–8.
Docket No. RP89–242–006, Tennessee Gas Pipeline Company
CAG–9.
Docket No. RP91–203–013, Tennessee Gas Pipeline Company
CAG–10.
Docket No. RP92–134–001, Southern Natural Gas Company
CAG–11.
Docket No. RP87–15–032, Trunkline Gas Company
Docket No. RP92–128–001, Panhandle Eastern Pipe Line Company
CAG–12.
Docket No. RP92–122–001, Trunkline LNG Company
Docket No. RP92–124–001, Trunkline Gas Company
Docket No. RP92–125–001, Panhandle Eastern Pipe Line Company
CAG–13.
Docket No. RP92–126–001, Trunkline Gas Company
Docket No. RP92–127–001, Panhandle Eastern Pipe Line Company
CAG–14.
Docket No. RP92–120–001, Panhandle Eastern Pipe Line Company
CAG–15.
Docket Nos. RP92–104–000, 001, RP92–131–001 and 002, K N Energy, Inc.
CAG–16.
Omitted
CAG–17.
Docket No. TA92–1–7–001, Southern Natural Gas Company
CAG–18.
Omitted
CAG–19.
Docket Nos. TM92–6–48–000 and 001, ANR Pipeline Company
CAG–20.
Docket No. TM91–7–28–000, Panhandle Eastern Pipe Line Company
CAG–21.
Docket Nos. CP86–578–034, CP89–1740–008 and RP90–147–002, Northwest Pipeline Corporation
CAG–22.
Docket Nos. RP91–212–002, 003, 004, 005, 006 and 007, Stingray Pipeline Company
CAG–23.
Docket Nos. RP91–79–006, 001, TM91–4–2–000, 001, 002, TM92–2–2–000, RP91–204–003, RP90–111–000 and RP85–47–000, East Tennessee Natural Gas Company
CAG–24.
Docket No. PR92–2–000, Phillips Texas Border Pipeline Company
CAG–25.
Docket No. PR91–23–000, Midcoast Ventures I
CAG–26.
Docket No. RP92–142–000, Penn-York Customer Group v. Penn-York Energy Corporation
CAG–27.
Docket No. RP92–145–000, Natural Gas Clearinghouse v. Panhandle Eastern Pipe Line Company
CAG–28.
Docket No. RM91–8–001, Qualifying Certain Tight Formation Gas for Tax Credit
CAG–29.
Docket No. GP92–5–000, Wyoming Oil and Gas Conservation Commission, Wyoming 23—Second Frontier Formation, Sweetwater County, FERC No. JD92–00603T
CAG–30.
Docket Nos. GP92–2–000 and 001, Michigan Consolidated Gas Company
CAG–31.
Docket Nos. RP91–140–000 and 001, Questar Pipeline Company
CAG–32.
Docket Nos. RP92–73–000, RS92–21–000 and CP92–508–000, National Fuel Gas Supply Corporation
CAG–33.
Docket Nos. RS92–18–000 and RS92–102–000, Kentucky West Virginia Gas Company
CAG–34.
Docket Nos. RP92–93–000 and RP91–141–005, Williston Basin Interstate Pipeline Company
CAG–35.
Docket No. CP89–1281–017, Natural Gas Pipeline Company of America
CAG–36.
Docket No. RP91–169–000, Northern Border Pipeline Company
CAG–37.
Docket Nos. RS92–45–000 and CP89–1281–020, Natural Gas Pipeline Company
CAG–38.
Docket No. RS92–71–000, Overthrust Pipeline Company
CAG–39.
Docket No. RS92–85–000, Trailblazer Pipeline Company
CAG–40.
Omitted
CAG–41.
Docket No. CP91–2759–001, Northern Natural Gas Company
CAG–42.
Docket No. CP92–256–001, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket No. CP91–2394–001, Questar Pipeline Company
CAG–44.
Docket No. CP91–1110–000 and 001, Colorado Interstate Gas Company
CAG–45.
Omitted
CAG–46.
Docket Nos. CP91–2322–003 and CP90–767–006, Paiute Pipeline Company
CAG–47.
Docket Nos. CP91–780–000, 001, 002, 003, RP92–112–000 and 001, Northwest Pipeline Corporation
CAG–48.
Docket Nos. CP92–243–000, Transwestern Pipeline Company
CAG–49.
Docket No. CP92–358–000, Colorado Interstate Gas Company
CAG–50.
Docket Nos. CP92–134–000 and 001, TOMCAT, a Texas Intrastate Pipeline
CAG–51.
Docket Nos. CI63–195–003, Tenneco Oil Company, TOC-Rocky Mountains Inc. and Amoco Production Company
CAG–52.
Docket No. RS92–90–000, Wyoming Interstate Company, Ltd.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. ER91–576–000, Ocean State Power II. Order on rate filing for Phase II.
E–2.
Docket No. ER91–313–001, Pennsylvania Electric Company. Order on rehearing of Commission order on rate filing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket No. CP89–93–007, Williams Natural Gas Company. Whether the Commission has jurisdiction over facilities located entirely within Oklahoma used to provide transportation to an end-user.
PC–2.
Docket No. CP92–285–000, Richfield Gas Storage System. Order on application to construct and operate a new storage field to provide unbundled open access storage.
PC–3.
Docket No. CI88–496–001, O&R Energy, Inc.
Docket No. CI91–98–000, Southern California Gas Company
Docket No. CI91–115–000, San Diego Gas & Electric Company
Docket No. CI92–20–000, MASSPOWER
Docket No. CI92–22–000, The Berkshire Gas Company
Docket No. CI92–27–000, Boston Gas Company
Docket No. CI92–32–000, Oregon Natural Gas Development Corporation
Docket No. CI92–38–000, The Brooklyn Union Gas Company
Docket No. CI92–41–000, NI–TEX, Inc.
Docket No. CI90–151–001, Indeck Energy Services, Inc.
Docket No. CI91–34–001, Midland Cogeneration Venture Limited Partnership
Docket No. CI92–11–000, Tenaska Gas Company
Docket No. CI92–18–000, Tenaska Marketing Venture
Docket No. CI92–21–000, Destec Gas Services, Inc.
Docket No. CI92–39–000, MCV Gas Acquisition General Partnership
Docket No. CI92–43–000, Encogen Northwest, L.P.
Docket No. CI92–40–000, ONG Western, Inc., *et al.* Order on applications for new blanket marketer certificates and for amendment of existing blanket marketer certificates.

PC–4.
Docket Nos. CI90–58–001 and 002, New England Power and The Narragansett Electric Company
Docket No. CI91–33–002, JMC Fuel Services, Inc.
Docket No. CI91–35–002, Connecticut Natural Gas Corporation
Docket No. Docket No. CI91–52–002, Providence Gas Company and Prov. Energy Investments, Ltd.
Docket No. CI91–28–002, Northern Minnesota Utilities.
Docket No. CI91–75–000, Peoples Natural Gas Company, Division of Utilicorp United, Inc.
Docket No. CI91–78–000, Gulf States Pipeline Corporation
Docket No. CI91–79–002, Transock, Inc.
Docket No. CI91–85–002, Commonwealth Gas Company
Docket Nos. CI91–94–001 and 002, New York State Electric & Gas Corporation
Docket Nos. CI91–97–001 and 002, Niagara Mohawk Power Company
Docket Nos. CI91–104–001 and 002, New Jersey Natural Gas Company
Docket Nos. CI92–1–001 and 002, Washington Natural Gas Company
Docket Nos. CI89–461–001 and 002, Quantum Chemical Corporation
Docket Nos. CI91–88–001 and 002, Doswell Limited Partnership
Docket Nos. CI91–93–001 and 002, Lockport Energy Associates, L.P.
Docket Nos. CI91–101–001 and 002, Northeast Jersey Energy Associates
Docket Nos. CI91–102–001 and 002, Northeast Energy Associates
Docket No. CI91–103–000, Ocean State Power II
Docket No. CI91–106–001, Honda of America Mfg., Inc.
Docket Nos. CI91–126–001 and CI91–126–002, Manville Corporation, *et al.*
Docket Nos. CI91–128–001 and 002, Cogen Energy Technology, L.P. Order on requests for rehearing of orders issuing blanket marketing certificates.

PC–5.
Docket No. RM92–9–000, Regulations Governing Blanket Marketer Sales Certificates. proposed changes to regulations.

Dated: June 3, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13550 Filed 6–4–92; 4:51 pm]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 11, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Service Corporations—Amending part 611, subpart I, title VIII (Final).
b. Equal Access to Justice Act Implementation (Proposed).

2. Other

a. Charter Cancellations—Valentine PCA and O'Neill PCA.

Closed Session *

A. New Business

1. Enforcement Actions

Dated: June 4, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–13549 Filed 6–4–92; 4:50 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

DATE TIME AND PLACE: June 30, 1992, 10:30 a.m., Commission Meeting Room (Room 856), 1919 M Street, N.W., Washington, D.C.

The agenda for the meeting will consist of:

1. Introduction
2. Minutes of Last Meeting
3. Report of Working Party 1 Policy and Regulation
4. Report of Working Party 2 Transition Scenarios
5. Scheduling of Final Report Submissions
6. General Discussion
7. Other Business
8. Date and Location of Next Meeting
9. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairs.

Any questions regarding this meeting should be directed to George Vradenburg III at (213) 203–1334, Dr. James J. Tietjen at (609) 734–2237, or Gina Harrison at (202) 623–7792.

Dated: June 4, 1992

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13595 Filed 6–5–92; 10:44 am]

BILLING CODE 6712–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, June 15, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 5, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–13682 Filed 6–5–92; 3:48 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 16, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB–117 (Sub-No. 6), *Elgin, Joliet and Eastern Railway Company—Abandonment—Will County, IL.*
Ex Parte No. 346 (Sub-No. 14A), *Rail General Exemption Authority—Miscellaneous*

Agricultural Commodities—Petition of G. & T. Terminal Packaging Co., Inc. et al. to Revoke Conrail Exemption
Ex Parte No. 502, *Bulk Grain and Grain Products—Loss and Damage Claims*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92–13476 Filed 6–4–92; 12:16 pm]
BILLING CODE 7503-01-M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Forum on Library and Information Services' Roles in the National Research and Education Network (NREN)

DATE AND TIME:
July 20, 1992—9:00 a.m.–4:30 p.m.
July 21, 1992—9:00 a.m.–4:30 p.m.

PLACE: Department of Labor (Auditorium), 200 Constitution Avenue, N.W., Washington, D.C.

STATUS: Open.

PURPOSE OF THE FORUM: NREN is part of the High-Performance Computing Act of 1991. The NCLIS forum will help clarify the issues and concerns of the national library information services community, both as providers of information to be carried on NREN and as representatives of large groups of network users and potential users. Representatives of libraries, information services, and other industries, associations, agencies and institutions are invited to comment. The forum's findings will be made available to the Office of Science and Technology Policy (OSTP) prior to the December 1992, OSTP report to Congress on the NREN.

Those wishing to present oral and/or written statements should specifically address one or more of the areas to be covered in the report to Congress:

(1) Effective mechanisms for providing operating funds for the maintenance and use of the Network, including user fees, industry support, and continued Federal investment;

(2) The future operation and evolution of the Network;

(3) How commercial information service providers could be charged for access to the Network, and how Network users could be charged for such commercial information services;

(4) The technological feasibility of allowing commercial information service providers to use the Network and other federally funded research networks;

(5) How to protect the copyrights of material distributed over the Network; and

(6) Appropriate policies to ensure the security of resources available on the Network and to protect the privacy of users of networks.

Individuals interested in providing oral testimony should contact Kim Miller, NCLIS, 1111 18th St., N.W., Suite 310, Washington, D.C. 20036, Telephone: 202 254–3100, by June 30. Written statements must be received by August 31.

If you need special accommodations due to a disability, please contact Barbara Whiteleather (202) 254–3100.

FOR FURTHER INFORMATION CONTACT: Barbara Whiteleather, NCLIS.

Dated: June 4, 1992.

Peter R. Young,
NCLIS Executive Director.

[FR Doc. 92–13593 Filed 6–5–92; 10:44 am]
BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 57, No. 111
Tuesday, June 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-063-1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

Correction

In notice document 92-11208 beginning on page 20449, in the issue of Wednesday, May 13, 1992, make the following corrections:

1. On page 20450, in the table, in the fourth column, under "Organisms", in the third paragraph, "Repeseed" should read "Rapeseed".

2. On the same page, in the same column, in the last paragraph, in the 2d line "*B÷*cillus", should read "*Bacillus*".

3. On the same page, in the first column, in the last paragraph, in the 2d line, from the end of the paragraph, "44 R 52172-51274," should read "44 FR 51272-51274".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

Correction

In notice document 92-12605 beginning on page 22727 in the issue of Friday, May 29, 1992, make the following correction:

1. On page 22728, in the first column, under **Commodities**, in the fourth line from the end of the paragraph should read "6510-00-582-7993".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0209]

Drug Export; Pronestyl®(Procainamide Hydrochloride) Capsules

Correction

In notice document 92-11003 beginning on page 20286, in the issue of Tuesday, May 12, 1992, make the following corrections:

1. On page 20286, in the 3d column, under **SUPPLEMENTARY INFORMATION:**, in the 8th and 11th lines, "Section 820(b)(3)(B) and (C)" should read "Section 802(b)(3)(B) and (C)".

2. On the same page, in the same column, in the same paragraph:

a. In the 18th line, "30 days" should read "10 days".

b. In the 10th line from the end of the paragraph "pronesty®" should read "pronestyl®".

c. In the 2d line from the end of the paragraph "March 30, 1992" should read "March 20, 1992".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-314 through 317 (Preliminary), and Investigations Nos. 731-TA-552 through 555 (Preliminary)]

Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil France, Germany, and the United Kingdom

Correction

In notice document 92-9040 beginning on page 14431 in the issue of Monday, April 20, 1992, the heading should read as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
June 9, 1992

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Improvements to Hazardous Materials Identification Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-206; Notice No. 92-6]

RIN 2137-AB75

Improvements to Hazardous Materials Identification Systems

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), requires that the Secretary of Transportation initiate a rulemaking proceeding to determine: (1) Methods to improve the current system of placarding vehicles transporting hazardous materials; (2) methods for establishing and operating a central reporting system and computerized telecommunications data center; and (3) the feasibility, necessity and safety benefits of requiring carriers to establish continually monitored emergency response telephone systems. The purpose of this notice is to solicit public comments on these issues.

DATES: Comments must be received on or before August 10, 1992.

ADDRESSES: Copies of the HMTUSA may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371 (202) 275-2091. Comments to this ANPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590/0001. Comments should identify the Docket (HM-206) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5046. Fax number: (202) 366-3753. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366-4488.

SUPPLEMENTARY INFORMATION:

I. Legislative Requirements

On November 16, 1990, the President signed into law the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Pub. Law 101-615) resulting in a number of amendments to the Hazardous Materials Transportation Act (HMTA) of 1974. Section 25 of HMTUSA requires DOT to initiate a rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials and to determine methods for establishing and operating a central reporting system and computerized telecommunications data center for tracking hazardous materials shipments.

The Act directs the Department to consider methods of improving the placarding system to include: (1) Methods to make placards more visible, (2) methods to reduce the number of improper and missing placards, (3) alternative methods of marking vehicles for the purpose of identifying hazardous materials being transported, (4) methods of modifying the composition of placards to ensure their resistance to fire, (5) improving the coding system used with respect to such placards, (6) identification of appropriate emergency response procedures through symbols on placards and (7) whether or not telephone numbers for continually monitored emergency response telephone systems should be displayed on vehicles transporting hazardous materials.

Section 25 also requires DOT to evaluate in a rulemaking proceeding: (1) Whether a central reporting system and computerized telecommunications center should be operated by the Federal government or a private entity, either on its own initiative or under contract with the United States, (2) the estimated annualized cost of establishing, operating and maintaining such a system and center and for carrier and shipper compliance with such a system, (3) methods for financing the cost of establishing, operating and maintaining such a system and center, (4) the projected safety benefits of establishing, operating and maintaining such a system and center, (5) whether or not shippers, carriers and handlers of hazardous materials should have access to such a system, (6) methods for ensuring the security of the information and data stored in such a system, (7) types of hazardous materials and types of shipments for which information and data should be stored in such a system, (8) the degree of liability of the operator of such a system and center for providing incorrect, false or misleading information, (9) deadlines by which shippers, carriers and handlers of hazardous materials should be required to submit information to the operator of such a system and center, and minimum standards relating to the form and content of such information, (10) measures for ensuring compliance with the deadlines and standards for operating such a system, and (11) methods for accessing such a system through mobile satellite service or other technologies having the capability to provide two-way voice, data or facsimile service.

Section 26 of HMTUSA requires DOT to initiate a rulemaking on the feasibility, necessity and safety benefits of requiring hazardous materials carriers (in addition to the existing requirement for shippers) to maintain continually monitored telephone systems to provide emergency response information and assistance. DOT is required to determine which hazardous materials, if any, would be covered by such a requirement.

II. Hazard Identification and Communication System Under the Hazardous Materials Regulations (HMR)

Over the last 25 years, DOT has developed a comprehensive hazardous materials identification and communication system for hazardous materials. The system is designed to provide enforcement, fire and emergency response personnel with information in the event of transportation incidents or accidents involving the release of hazardous materials. Hazard communication requirements are set forth in subparts C through G of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). The system involves communication of the following types of information: (1) Hazardous materials descriptions, including specific or generic proper shipping names, chemical or technical names, hazard classes, identification numbers, and other vital information, entered on shipping papers carried on the transport vehicle by the transporter; (2) hazardous materials proper shipping names and identification numbers, marked on non-bulk and bulk packages, (3) primary and subsidiary hazards, identified by labels affixed to packages, (4) primary hazards, identified by placards affixed to transport vehicles, freight containers and bulk packagings, and (5) emergency response information, entered on shipping papers, or presented in separate documents.

Emergency response information must be maintained on the transport vehicle, train, vessel or aircraft during transportation of the hazardous material in the same manner as is required for shipping papers. On aircraft, emergency response information must be maintained in the same manner as is required for the notification to the pilot-in-command. The information describes immediate hazards to health, risks of fire or explosion, precautions to be taken by responders first arriving at the scene of an incident, initial methods for handling spills and leaks in the absence of fire, and preliminary first aid measures to be taken. This information may be entered on shipping papers, presented on appropriate guide pages in DOT's "Emergency Response Guidebook," on material safety data sheets, or in other appropriate emergency response guidance documents.

Shippers who offer hazardous materials for transportation must also enter an emergency response telephone number on the shipping paper. The number must be monitored at all times while shipments are being transported or are stored incident to transportation. In effect, a first responder using that number must be able to contact, in one phone call, a person who is either knowledgeable about the material and has comprehensive response and mitigation information, or has immediate access to such a person.

Firefighters and emergency response personnel have been trained to use hazard communication and emergency response information in responding to incidents. DOT shipping paper information, package commodity markings, hazard warning labels and vehicle placards are cross-referenced in DOT's Emergency Response Guidebook (ERG), which provides guidance for initial actions to be taken in response to hazardous materials incidents. Since 1980, RSPA has distributed more than 3.5 million copies of the ERG to emergency response entities without charge.

The current hazard communication system is recognized worldwide. DOT has aligned U.S. hazard communication requirements with international standards with adoption in 1976 of labels and placards conforming to United Nations (UN) recommendations.

III. Placarding System: Background and Potential Changes

In September 1976, the Materials Transportation Bureau (predecessor of RSPA) issued final rules under Docket HM-103/112 (41 FR 40614-40691, September 20, 1976) to adopt a uniform vehicle placarding system. Final rules in HM-103/112 also required cargo tanks, portable tanks and tank cars to be uniformly marked and prescribed format improvements for shipping paper entries. Prior to the adoption of the uniform system that is now employed, shippers and carriers claimed they were burdened with a complex placarding system that failed to adequately communicate hazard information. Each mode of transportation had its own placarding system. While motor vehicles displayed hazard warnings (e.g., Flammable) text on rectangular background placards, rail car placarding contained detailed text on a square-on-point background.

Under HM-103/112, DOT established uniform placard formats and procedures among the different modes of transportation. In place of extensive textual elaboration of hazards on placards (e.g., "CAUTION This Car Contains POISON GAS Beware of Fumes from Leaking Packages") DOT revised its placarding format to display only single hazard class names with associated colors and pictographs. A final rule issued in 1977 achieved a unified placarding system.

DOT more closely aligned with the UN-recommended hazard communications system under Docket HM-181 (55 FR 52402-52729, Dec. 21, 1990). For example, DOT adopted the UN-recommended Dangerous When Wet (4.2) placard to replace the Flammable Solid W placard and added the Spontaneously Combustible (4.3) placard for which, under the old system, there is no separate hazard class. The placards displayed in subpart F of part 172 under Docket HM-181 largely retain the DOT format established in 1976. They are basically consistent with international and Canadian requirements, with minor differences in placard size and format. Provisions for placarding in subpart F of 49 CFR part 172 cover placard visibility, display and location (§ 172.516), placard size and construction specifications (§ 172.519), placard graphics (§§ 172.522-560), placarding exceptions and prohibited placarding (§ 172.502), and hazard class numbers on placards (§ 172.334). For most materials, changes to placarding requirements under Docket HM-181 go into effect on October 1, 1994.

Under HM-181, RSPA also adopted the UN-recommended Class 9 placard for miscellaneous materials many of which were previously regulated by DOT as other regulated materials (ORMs) and were not subject to placarding requirements. The UN-recommended "Keep Away From Food" placard for low-hazard Class 6 poison materials also was adopted. Petitions to reconsider the final rule questioned the need for these placards. They pointed out that some ORMs excepted from placarding under 49 CFR are regulated under HM-181 as Table 2 materials requiring placarding when transported in amounts exceeding 1,000 pounds gross weight. Under § 391.11(a)(7) of the Federal Motor Carrier Safety Regulations (FMCSR), a vehicle used to transport hazardous materials is defined as a "commercial vehicle" requiring the driver to carry a commercial license if the vehicle contains a quantity of materials requiring placarding under 49 CFR. Petitioners stated that motor carriers transporting Class 9 miscellaneous materials or materials classified under the existing ORM class, other than hazardous wastes, have not been subject to the FMCSR because these materials were not subject to placarding. For the same reasons, petitioners also recommended excepting Molten Sulfur from Class 9 placarding, as now required by § 172.504(a).

In recent years, at least one organization has advocated replacement of the existing placarding system. During 1989 Congressional hearings on HMTA Amendments, the International Association of Fire Fighters (IAFF) expressed the view that DOT's placarding system is inadequate to provide essential response information. IAFF testified before the House Subcommittee on Surface Transportation on July 12, 1989 that, "current Federal law requires shippers to place placards on vehicles to identify hazardous cargoes, but often the placard is missing, burning or inaccurate." ("Hearings before the Subcommittee on Surface Transportation of the Committee on Public Works, House of Representatives, 101st Congress, First Session," pp. 896) IAFF stated that emergency responders would be better served by a computerized telecommunication system proposed in legislation introduced on June 8, 1989 (H.R. 2584), which was subsequently enacted in HMTUSA.

In this notice, RSPA also addresses whether or not the general prohibition contained in § 172.502(b) should be modified to specifically apply to the practice of displaying logos and slogans (e.g.; "Drive Safely") on closed flip-type placard devices. Section 172.502(b) prohibits any display which "* * * by its color, design, shape or content could be confused with any placard described * * *" in the HMR. RSPA and the Federal Highway Administration believe that the use of logos and slogans on flip-type devices diminishes the

effectiveness of required placarding and that consideration should be given to specifically prohibiting them.

IV. Central Reporting System and Telecommunications Center: Background

Section 109(d)(1)(B) of the HMTA, which was not amended by the HMTUSA, requires the Secretary to establish and operate a central computerized data center to provide "technical and other information and advice for meeting emergencies" to firefighters and law enforcement personnel.

Since March 13, 1980, DOT has considered the section 109 requirement satisfied by recognizing the Chemical Transportation Emergency Center (CHEMTREC) operated by the Chemical Manufacturers Association (CMA) in a "Statement of Formal Recognition and Attendant Understandings." The Statement describes the CHEMTREC service "as a source of case-by-case telephonically issued information and advice to public and private bodies and organizations and other persons confronted with chemical and other hazardous materials emergency incidents."

CHEMTREC has been in operation 24 hours a day, seven days a week, since September 1971 providing fire service, law enforcement, emergency response, medical, and industry personnel with essential on-scene emergency information. Through its operation of an "800" number, CHEMTREC provides immediate guidance to any caller, at no charge, from the private and public sector who has an emergency involving any hazardous material. CHEMTREC also acts as a bridge to thousands of entities for immediate, detailed guidance on how to handle emergencies involving hazardous materials. Since adoption of a requirement to enter an emergency response telephone number on shipping papers (Docket HM–126C; 55 FR 33707; August 17, 1990), a number of entities now offer emergency response information services in addition to CHEMTREC.

The need for a central computerized reporting system for all hazardous materials shipments has been at issue for over five years among three different Congressional committees, the emergency response community, including firefighter organizations, industry, and RSPA. Proponents of a mandated central computerized reporting system, including IAFF, believe that there are inadequacies in existing information systems that threaten the safety of firefighters and the public. Opponents have expressed the view that it is unlikely that any of the few serious accidents that have occurred in recent years would have been prevented or mitigated by the information a centralized system would provide, and that such a system would be costly and impractical given the number of shipments involved.

Section 25 of HMTUSA directs DOT to institute this rulemaking report to Congress on ways such a system could be implemented. The Secretary also must give substantial weight in the rulemaking to recommendations made by the National Academy of Sciences (NAS) regarding the "feasibility and necessity" of implementing a centralized reporting and data system. The NAS study is mandated by section 25(b)(1) of HMTUSA.

In May 1991, DOT entered into a contract with NAS to conduct the study. A 16-member committee was formed, representing industry, academic, emergency response and firefighter communities. The first meeting of the Committee for the Assessment of a National Hazardous Materials Shipment Information System took place on November 13–14, 1991, establishing parameters for the study and project time-lines. The committee is scheduled to complete its study and report to Congress and the Secretary of Transportation in November 1992.

V. Request for Comments

Comments are requested in regard to methods for improving the current placarding system, establishing a centralized reporting system and computerized data center and requiring carriers to establish continually monitored emergency response telephone systems. Reasons should be given for supporting or opposing any of the proposed changes. Comments should identify and quantify expected benefits of such requirements and expected costs which would be incurred or saved as a result of each suggested regulatory change. If hazardous materials transportation incidents are referenced to demonstrate a need for changes to DOT's hazard communications system, please provide specific dates, locations and consequences directly attributable to inadequate hazard communication. Comments simply stating that there have been many transportation incidents in which emergency responders were unable to recover sufficient response information would not be as helpful in our evaluation as would specific cause/effect information.

For the convenience of commenters, questions are numbered consecutively. RSPA requests that commenters preface responses to questions raised in this ANPRM with the identifying number of each question. Comments need not be limited to the questions but should be pertinent to the subject matter.

Comments pertaining to improvements in DOT's hazard communication system already received pursuant to the review of Departmental regulations under the Regulatory Review Process initiated by the President (57 FR 4744, February 7, 1992) are addressed by the questions in this document or will be addressed in forthcoming corrections to Docket HM–181.

A. Improvements to the placarding identification system. Section 25(a)(2)(A) of HMTUSA requires the Secretary to initiate a rulemaking to determine methods of improving the current system of placarding vehicles transporting hazardous materials.

Placard Visibility, Size and Location

1. Would increasing the size of placards, incorporating larger identification numbers and hazard class symbols, improve hazard recognition? What size would be most effective? Are there any specific incidents in which the use of larger placards would have improved emergency response? The HMR specify a minimum size of 273 millimeters (mm) on edge for domestic placards and 250 mm for those conforming to international standards.

2. Is the existing square-on-point configuration too restrictive for adding emergency response guidance and hazard identification information? What changes, if any, should be made? And if so, what would be the costs and benefits?

3. To improve placard visibility, should RSPA require placards to be affixed on a vehicle in a manner so that, in the event of an accident, they can be observed regardless of orientation of the vehicle? For example, should placards be located on the tops and bottoms (in addition to each side and end) of transport vehicles to ensure placard visibility in the event of rollover incidents? This was suggested by the National Transportation Safety Board (NTSB) Safety Recommendation I–90–11 addressing a November 30, 1988 incident involving an overturned motor vehicle. NTSB pointed out that "front placards on the trailer have often been obscured by the tractor, and rear placards attached to removable gates have been thrown from the vehicle during an accident sequence." Section 172.504(a) prescribes the location of placards on transport vehicles.

4. Should the three-inch (76 mm) separation distance between placards and other information displayed on

transport vehicles specified in § 172.516(c)(4) be increased to improve the presentation of placards? If so, please specify what distance or height would be effective to ensure that placards are readily identifiable by emergency responders.

5. RSPA is aware of comments that claim that slogans or advertisements displayed on configurations similar to placards can confuse emergency responders. Should RSPA prohibit display of advertisements and such slogans as "Drive Safely" or other information configured in shapes similar to DOT placards?

6. As an alternative to placarding, are there other methods of marking a transport vehicle to improve hazard communication including visibility and durability? For example, would a color banding scheme for marking transport units, as allowed under Canadian Transport of Dangerous Goods (TDG) Regulations, be a workable alternative to placarding?

7. To improve hazard identification and communication during emergencies, should RSPA consider an additional placarding system to include a national motor vehicle numbering system similar to the Universal Machine Language Equipment Register (UMLER) system now used to identify all rail cars in North America?

8. Domestically, use of reflective placards is permitted but not required under the HMR. However, placards constructed of reflective styrene material have been required under Part 5.27 of the Canadian TDG regulations for explosives and certain bulk shipments since January 1986. We estimate the cost per reflective placard as ranging between $6.85 and $15.85 depending on the quantity of placards ordered and information contained. Should reflective placards be required? If so, for what class of hazardous materials? What would be the cost of replacing existing placards with reflective placards?

9. Should RSPA require placards to be displayed at places where hazardous materials are stored incidental to transportation? If so, under what circumstances and in what manner?

Placard Information and Format

10. Should placards display information identifying appropriate emergency response procedures related to the hazardous materials being transported? Should placards display appropriate DOT Emergency Response Guidebook Guide numbers referencing potential hazards and corresponding emergency actions?

11. Should there be changes in basic placard format? What specific incidents, if any, demonstrate the need for such changes? Do existing hazard class symbols on placards, like the burning "O" on the OXYGEN placard, adequately convey hazard information to emergency responders? Are there other symbols that could be used to more effectively display hazard warnings?

12. Should RSPA require an additional rectangular placard for information that cannot effectively be contained in the square-on-point configuration? For example, the square-on-point placard could be used as an immediate indicator to responders that hazardous materials are present in the transport vehicle. Responders could then refer to the rectangular placard for essential response and hazard identification information.

13. Should the display of hazardous materials (UN, NA) identification numbers be more extensively used to convey emergency response information? Section 13.7.5 of the UN Recommendations on the Transport of Dangerous Goods (7th Edition) recommends that a fully-loaded truckload of a packaged commodity be identified with the UN identification number for that commodity.

14. Would the display of the Class 9 or "Keep Away From Food" placards provide emergency responders with needed information in the event of an incident or accident? Should a Class 9 placard be required for Elevated Temperature Materials?

15. Should DOT develop a new "Poison Inhalation Hazard" placard to more specifically identify liquids and gases that are poisonous by inhalation? If so, what should the placard design be? Under § 172.505 in Docket HM–181, any quantity of a poisonous material subject to the "Poison-Inhalation Hazard" shipping description in § 172.203(m)(3) must be placarded with either a "POISON" or a "POISON GAS" placard.

16. Under § 172.510, if Division 2.3 Zone A gases and Division 6.1 Packing Group I Hazard Zone A liquids poisonous by inhalation are shipped by rail, the "POISON" and "POISON GAS" placards must be placed within a white square background. Should this requirement be extended to other modes? Should other hazard classes be included in such a requirement?

17. Technical specifications for color tolerance charts for determining the acceptability of colors used on labels and placards are set forth in appendix A to part 172. Are color tolerance charts meeting these or other specifications (e.g., the Pantone Color Code System which is used in Canada) available from commercial sources? Are there color standards available which could be incorporated by reference into the HMR? What would be the cost of these standards to users?

Placard Construction and Attachment

18. Should the composition of placards be improved to minimize destruction and loss during a fire incident? General placard specifications are contained in § 172.519. Please provide examples where fire-resistant placards effectively conveyed hazard warning information to first responders at incidents involving vehicular fires?

19. Should means for attaching placards be improved to minimize tampering or placard loss in an incident? Specifications for a recommended placard holder are contained in appendix C to part 172.

Exceptions From Placarding Requirements

20. Should the aggregate gross weight exception for Table 2 materials in § 172.504(d) be raised or lowered? If so, to what level?

21. If the 1,000-pound placarding exception is maintained, should it be modified to require that transport vehicles containing packages of certain size (volume or weight) be placarded? For example, should a transport vehicle containing a 55-gallon package be required to be placarded?

22. Should use of the DANGEROUS placard, now specified in § 172.504(b) to indicate the presence of two or more classes of Table 2 materials, be further restricted or eliminated? Under § 172.504(b), a transport vehicle or freight container containing two or more classes of materials requiring different placards specified in Table 2 may be placarded DANGEROUS in place of the separate placarding. However, if 5,000 pounds or more of one class of material is loaded at one loading facility, the placard specified for that material in Table 2 must be used.

23. Should RSPA require the DANGEROUS placard for all shipments of Table 2 materials in amounts less than 1,000 pounds, and specific placards for all shipments of more than 1,000 pounds or other amounts? Should all hazardous materials, regardless of quantity, be required to be placarded when in transportation? Would the meaning and impact of placarding be diminished should all hazardous materials, regardless of quantity, be required to be placarded?

24. Based on the risks involved, should RSPA transfer certain Table 2

materials to Table 1? If so, please detail your recommendation.

Transition Period

25. Is there a need for a longer transition period, beyond October 1, 1994 as required in § 171.14(b)(4) under HM–181, for the implementation of placarding requirements? What effect would a longer transition period have on the ability of emergency responders to respond to hazardous materials incidents?

B. Central Reporting System and Telecommunications Data Center

Section 25(a) of HMTUSA also requires the Secretary to determine, by rulemaking, methods for establishing and operating a central reporting system and computerized data center for hazardous materials transportation that is capable of receiving, storing and retrieving data pertaining to all shipments of hazardous materials; a system that can identify hazardous materials being transported by any mode of transportation and provide emergency response information as needed by responders to accidents and incidents involving the transportation of hazardous materials.

26. Should a central reporting system and computerized telecommunications data center be established? If so, should it be operated by the Federal Government or by a private entity, either on its own initiative, or under contract to the Government?

27. What would be the projected safety benefits of establishing and operating such a system?

28. Should remote locations, such as Alaska, be excluded from mandatory participation in a central computerized data reporting system?

29. To what extent do existing centralized data reporting systems already provide dispatcher-to-vehicle transmissions? Could these systems be modified to provide information to emergency responders in the event of incidents or accidents involving hazardous materials?

30. What elements of DOT's hazard communication system, if any, could be eliminated by the use of centralized reporting? Marking, Labeling and/or Placarding? Shipping papers? Incident reporting?

Data Entry and Removal

31. When, and by whom, would data be entered into the system? For example, must a farmer who picks up a variety of pesticides from a chemical distributor enter data into this system? Who would enter data, and when would data be entered, for shipments originated by foreign shippers? How would required data be entered by shippers and carriers who do not have computer capabilities?

32. At what points in the distribution chain would additional entries have to be made, e.g., highway/rail interchanges? How would the system accommodate data interchange between carriers? Between modes? Who would be responsible for entering data regarding intermodal shipments?

33. If only shippers enter data, how would the system include less-than-truckload distribution where an average shipment will involve multiple vehicles (pickup, line hauls, and delivery)?

34. Should a shipment report contain: The name and address of the party providing the data; point of shipment origin; point of shipment destination; vehicle identification; DOT proper shipping name, hazard class and commodity identification number; emergency telephone contact number; and quantity of materials involved and reportable quantities for hazardous materials that are also hazardous substances? Are disclosures related to so-called "blind" shipments of any relevance to current business practices?

35. What additional information should be included for hazardous waste shipments? Who should be required to enter hazardous waste data? The original shipper or generator? The consolidator of various waste shipments from small generators? The treatment facility? The disposal facility?

36. How can the accuracy of data entered into the system be assured?

37. Once data is entered into the system, how long should it remain in the data base until it is purged? Who should purge the system once shipments reach consignees: The originating shipper; carrier; consignee or system personnel?

System Access and Safeguards

38. Who should have access to such a system for obtaining information about hazardous materials shipments and technical and other emergency response information? Should other governmental organizations, such as Federal and state emergency response teams, or law enforcement agencies monitoring the distribution of chemicals commonly used in illegal drug manufacture, be permitted to access the system? Should industry emergency response teams have access?

39. What methods should be employed for ensuring the security of the information in such a system?

40. How can shipment information be limited to persons who have no competitive interest in other shippers' or carriers' information?

Emergency Responders: Use of the System

41. What data elements pertaining to emergency response should be required to be entered into the system? If emergency response information is to be a part of the system, who should be responsible for its inclusion for uniformity of presentation and content?

42. How would emergency responders identify individual shipments in transit by using this system? By vehicle identification numbers? By vehicle registration numbers? By aircraft tail numbers? By other means?

43. How would the system deliver information to emergency responders? Direct data center-to-response vehicles? Data center-to state or local level dispatching units-to-vehicle? Modem-to-modem? Telephonic link? Facsimile hard copy to vehicle receivers? Other methods? Would data from an electronic notification system reach on-scene responders in time to make basic first-response decisions?

44. How can such a system be accessed through mobile satellite service or other technologies having the capability of providing 2-way voice, data or facsimile services?

45. Would only satellite tracking-augmented realtime information (providing vehicle identification at all times) be of any use to responders?

46. If the electronic shipment notification system is extended to the local level, would it be more cost-effective to link the system with local emergency planning committees (LEPCs) established under Superfund Amendments and Reauthorization Act (SARA) of 1986, local fire departments, police departments or other local organizations?

47. Please provide details regarding any accident in which emergency response personnel have been killed or injured due to involvement of hazardous materials transported in compliance with existing regulations (e.g., placarding, labeling, package marking and shipping paper requirements) that would have been averted had a centralized data system been established and operating at that time.

Training in the Use of the System

48. How would training for operating a central computerized tracking system be presented? How often? To whom should training be presented or required?

49. How would the system be organized to allow for different operational training levels or operator sophistication?

System Costs

50. What would be the total annualized estimated costs of employing a nationwide central reporting system?

51. What would be the capital costs, operating costs (including telecommunication costs), and personnel or contractor costs for establishing and maintaining a centralized reporting system?

52. Should user fees be imposed to cover the costs of operating such a system? If so, should fees be based on total annual shipments? On a per shipment basis? On a per entry basis? Should governmental agencies using the system be charged a fee based on the amount of system usage?

53. What would be the impact of the added costs of complying with mandatory electronic shipment notification requirements on the ability of U.S industry to compete in the international marketplace?

54. What would be the impact of imposing a user fee on foreign shippers or carriers?

55. What would be the cost impact of requiring Federal agencies to comply with mandatory electronic shipment notification requirements? (Federal agencies make over 500,000 hazardous materials shipments a year.)

C. Continually-Monitored Telephone Systems

56. Should carriers, in addition to shippers, be required to maintain continually-monitored emergency response telephone systems for all or certain hazardous materials in transportation as specified in 49 CFR 172.604? Why? What would be the costs or benefits? What specific incidents, if any, demonstrate the need for the carrier requirement?

57. What has been the experience of the continually-monitored telephone system requirement in 49 CFR 172.604 imposed on shippers?

58. Should a requirement for a carrier continually-monitored telephone system be triggered by a specific amount of hazardous materials being carried? Should a requirement for carrier continually-monitored telephone systems be applied only to shipments of hazardous materials in bulk packaging?

59. Should such a requirement be applied only to certain types and quantities of hazardous materials, such as Packing Group I or II poisons, flammable or corrosive materials; certain classes of explosives, or highway-route-controlled radioactive materials?

60. Should a carrier's continually-monitored number be added to shipping papers or other shipper documentation? Or should it be marked on the transport vehicle or on the transport vehicle placarding? Any or all of these options?

61. How would carriers obtain detailed emergency response information regarding the hazardous materials on their vehicles? Would placement of continually-monitored phone numbers on placards, or transport vehicles, be useful to emergency responders? Would the addition of this kind of information diminish the effectiveness of placards?

62. What qualifications should be established for carriers to carry out response assistance through a continually-monitored telephone system?

63. As shippers are permitted to do, should carriers be authorized to use such chemical information services such as CHEMTREC to perform the carrier's monitored phone responsibility?

VI. Administrative Notices

A. Executive Order 12291

The effect of this advance notice of proposed rulemaking (ANPRM) does not meet the criteria specified in section 1(b) of Executive Order 12291 because it is not yet a major rule. However, this ANPRM is a significant rulemaking under the regulatory procedures of the Department of Transportation [44 U.S.C. 11034]. This ANPRM does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act [42 U.S.C. 4321 *et seq.*]. A preliminary regulatory evaluation will be prepared based on comments to this ANPRM.

B. Executive Order 12612.

This ANPRM has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on information available at this time, RSPA does not believe that this ANPRM would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

As part of this rulemaking process, RSPA is required to consider economic impacts on small businesses and local governments under criteria of the Regulatory Flexibility Act. Comments are invited to help RSPA assess probable costs to small entities of implementing any of the actions suggested in this ANPRM.

Issued in Washington, DC on June 1, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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H.R. 4990/P.L. 102-298

Rescinding certain budget authority. (June 4, 1992; 106 Stat. 217; 19 pages) Price: $1.00

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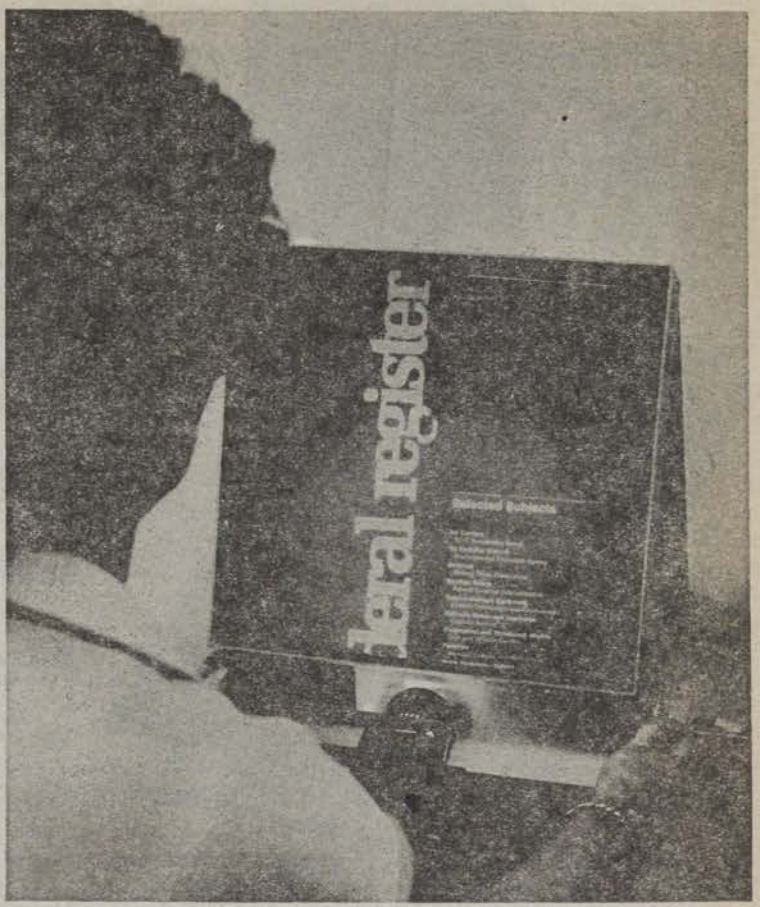

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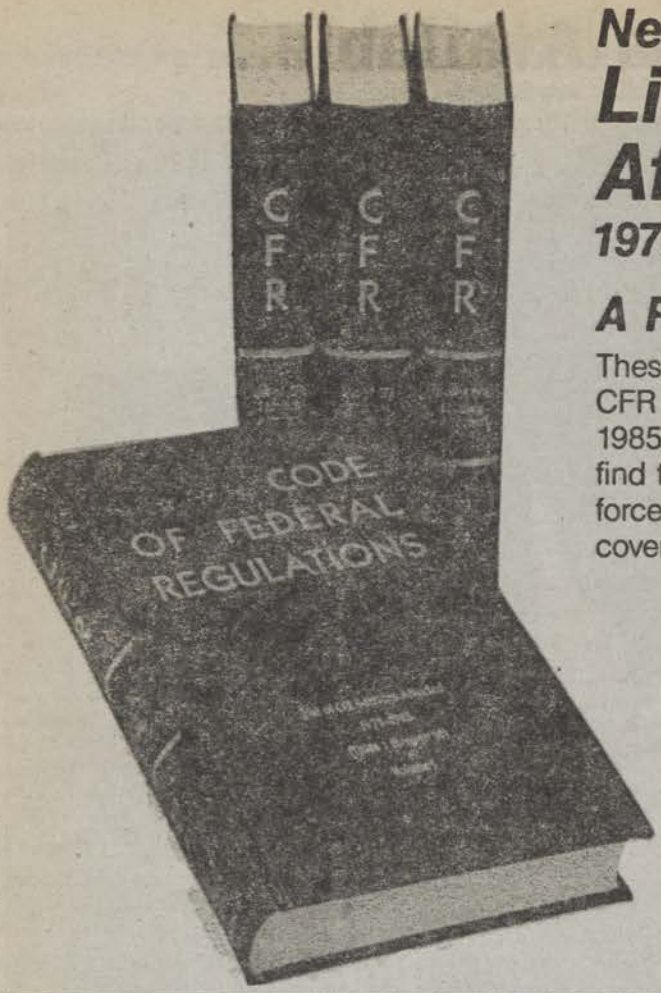

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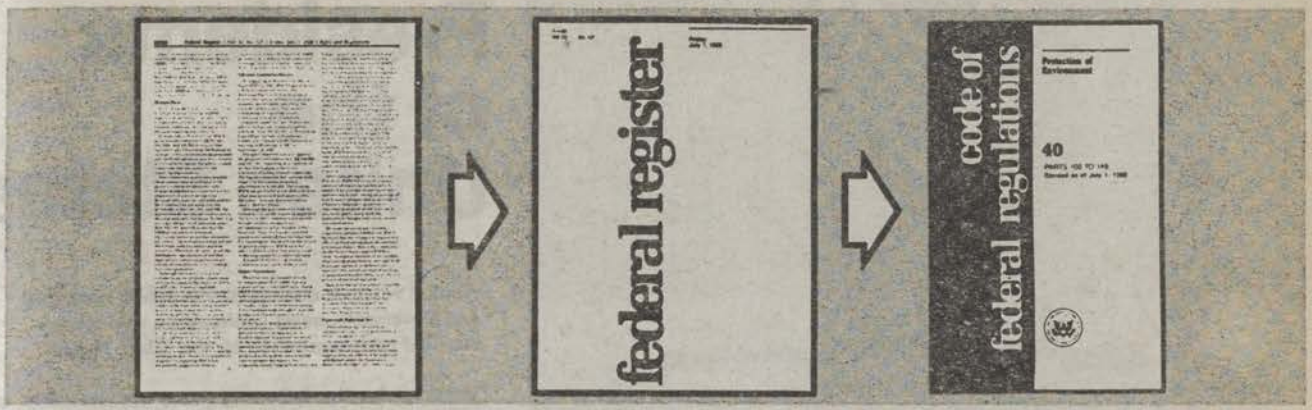

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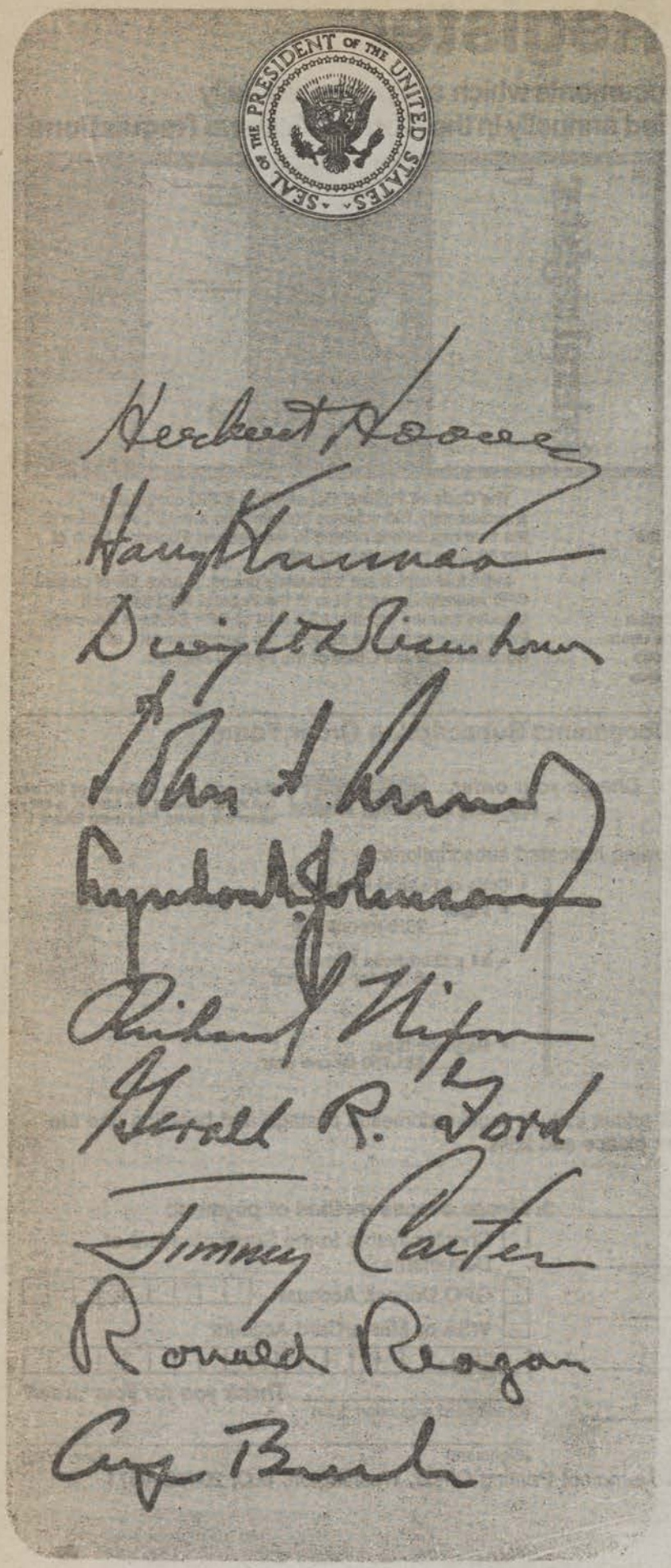

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